

## Exhibit 1

Fair Isaac Corporation v. Federal Insurance  
Company et al.  
Court File No. 16-cv-1054

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MINNESOTA  
3 -----  
4 Fair Isaac Corporation, ) File No. 16-cv-1054 (DTS)  
5 a Delaware Corporation, )  
6 Plaintiff, )  
7 v. )  
8 Federal Insurance Company, ) Courtroom 14W  
9 an Indiana corporation, ) Minneapolis, Minnesota  
10 and ACE American Insurance ) Thursday February 16, 2023  
11 Company, a Pennsylvania ) 9:12 a.m.  
12 Corporation, )  
13 Defendants. )  
14 -----  
15

16 BEFORE THE HONORABLE DAVID T. SCHULTZ  
17 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE  
18

19 (JURY TRIAL PROCEEDINGS - VOLUME II)  
20

21 Proceedings recorded by mechanical stenography;  
22 transcript produced by computer.  
23 \* \* \*24

1 **APPEARANCES:**

2 For Plaintiff: MERCHANT & GOULD P.C.  
3 BY: ALLEN W. HINDERAKER  
4 HEATHER J. KLIBENSTEIN  
5 PAIGE S. STRADLEY  
6 MICHAEL A. ERBELE  
7 JOSEPH W. DUBIS  
8 GABRIELLE L. KIEFER  
9 150 South Fifth Street, # 2200  
10 Minneapolis, Minnesota 55402  
11  
12 For Defendants: FREDRIKSON & BYRON  
13 BY: TERENCE J. FLEMING  
14 LEAH C. JANUS  
15 CHRISTOPHER D. PHAM  
16 RYAN C. YOUNG  
17 PANHIA VANG  
18 200 South Sixth Street, # 4000  
19 Minneapolis, Minnesota 55402  
20  
21 O'MELVENY & MYERS LLP  
22 BY: LEAH GODESKY  
23 ANTON METLITSKY  
24 DARYN E. RUSH  
25 ROXANA GUIDERO  
Times Square Tower  
7 Times Square  
New York, New York 10036  
26  
27 Court Reporters: RENEE A. ROGGE, RMR-CRR  
28 KRISTINE MOUSSEAU, CRR-RPR  
29 MARIA V. WEINBECK, RMR-FCR  
30 PAULA RICHTER, RMR-CRR-CRC  
United States District Courthouse  
31 300 South Fourth Street, Box 1005  
32 Minneapolis, Minnesota 55415  
33  
34 \* \* \*35

1	INDEX - 2/16/23 - VOL. 2
2	PAGE:
3	<b>Plaintiff Opening Statement..... 13</b>
4	<b>Defendant Opening Statement..... 38</b>
5	
6	<b>PLAINTIFF WITNESSES:</b>
7	<u>SEAN BASEMAN:</u>
8	Direct Examination by Mr. Hinderaker..... 90
9	Cross Examination by Ms. Godesky..... 175
10	Redirect Exam by Mr. Hinderaker..... 190
11	
12	<u>JEAN-LUC MARCE:</u>
13	Direct Examination by Ms. Kliebenstein..... 193
14	
15	
16	<b>JOINT EXHIBITS:</b>
17	J1, J2..... 100
18	
19	<b>PLAINTIFF EXHIBITS:</b>
20	839-850..... 236
21	1139-1149..... 236
22	1151-1165..... 236
23	
24	
25	

<p style="text-align: right;">179</p> <p>1 <b>A. Oh, yes. No, they would certainly require other</b>      2 <b>software components.</b></p> <p>3 Q. Okay. Blaze is also typically added to customers'      4 already existing computer applications, right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And large companies may sometimes have hundreds of      7 different components working with Blaze in a single computer      8 application?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So when Blaze is used in these applications at large      11 companies like Chubb, Blaze is one component of a      12 multi-faceted complex system?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. We can agree that when FICO sells Blaze to a client like      15 Chubb, Blaze itself does not contain the actual rules,      16 right?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And the actual idea of all of the rules comes from      19 humans?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And you testified during your direct examination that      22 Blaze Advisor provides some value to insurance companies,      23 right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. As a general matter, though, you agree that it would be</p>	<p style="text-align: right;">181</p> <p>1 any survey of Chubb customers regarding why they purchase      2 insurance from Chubb?</p> <p>3 <b>A. Repeat the question.</b></p> <p>4 Q. As part of your work at FICO, you haven't ever set out      5 to conduct a survey of Chubb customers to find out why      6 they're purchasing insurance from Chubb?</p> <p>7 <b>A. I have not, no.</b></p> <p>8 Q. You don't even know what the term gross written premium      9 or GWP means, right?</p> <p>10 <b>A. I do not.</b></p> <p>11 Q. You spoke during direct about some problem-solving      12 exercises you did for some unnamed insurance companies at      13 the beginning of your discussion with Mr. Hinderaker.</p> <p>14 Do you remember that?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. That was not specific to Chubb. That was your general      17 experience?</p> <p>18 <b>A. General experience, correct.</b></p> <p>19 Q. And then you started talking about Chubb and you said it      20 was apparent that Blaze was central to Chubb's systems,      21 right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. You said it was pivotal?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Correct?</p>
<p style="text-align: right;">180</p> <p>1 very difficult to try to measure the value that Blaze      2 provides to a particular company?</p> <p>3 <b>A. Difficult, yes, but not unachievable.</b></p> <p>4 Q. But you personally would not be capable of quantifying      5 the value that Blaze provides to a customer?</p> <p>6 <b>A. Correct, in a monetary sense.</b></p> <p>7 Q. So let's talk a little bit more about the world of      8 insurance. I think you said during direct that you have a      9 cursory understanding of insurance, right?</p> <p>10 <b>A. That is correct.</b></p> <p>11 Q. That means fairly basic, right?</p> <p>12 <b>A. Agreed.</b></p> <p>13 Q. You have never been an insurance agent or a broker?</p> <p>14 <b>A. No.</b></p> <p>15 Q. You have never been an insurance underwriter?</p> <p>16 <b>A. No.</b></p> <p>17 Q. You have never worked in the technology group of an      18 insurance company?</p> <p>19 <b>A. Nope.</b></p> <p>20 Q. And you've never worked in the claims side of an      21 insurance company?</p> <p>22 <b>A. No.</b></p> <p>23 Q. You've never held any position at an insurance company?</p> <p>24 <b>A. Nope. Only a customer.</b></p> <p>25 Q. And you haven't conducted, as part of your work at FICO,</p>	<p style="text-align: right;">182</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. But when it comes to the use of Blaze at Chubb, you are      3 only vaguely familiar with how the software was used, right?</p> <p>4 <b>A. I was very familiar with how the software was used in</b>  <b>5 the context of everything else that they were doing,</b>  <b>6 correct. But to what actual decisions they were using it,</b>  <b>7 no.</b></p> <p>8 Q. Is it true that you were only vaguely familiar with how      9 the software was used at Chubb?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. All you knew was that Blaze may have been used in an      12 underwriting and claim fraud application, but beyond that,      13 you didn't have any intimate knowledge of how Chubb actually      14 used Blaze, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. If we could put up the fourth slide that you used during      17 your direct examination, Vanessa?</p> <p>18 MR. HINDERAKER: The one that's numbered 4.</p> <p>19 MS. GODESKY: Yes. Thank you.</p> <p>20 BY MS. GODESKY:</p> <p>21 Q. So this slide is titled "The Business Value of Blaze</p> <p>22 Advisor," right, Mr. Baseman?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And the first bullet says, Blaze reduces the time and</p> <p>25 costs to develop decision-making applications.</p>

<p>183</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And that's a general statement, right, Mr. Baseman? You</p> <p>3 have not done anything in the course of your work at FICO to</p> <p>4 specifically analyze the extent to which Blaze reduced time</p> <p>5 at Chubb?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. And then your third bullet says, new applications can be</p> <p>8 developed and changes to existing applications can be made</p> <p>9 faster than was possible before Blaze, right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. But you haven't analyzed and you don't have any</p> <p>12 information from the course of your work at FICO that allows</p> <p>13 you to say whether it's true that new applications were</p> <p>14 developed faster at Chubb because of Blaze, correct?</p> <p>15 <b>A. Not so. So we do have customers that continue</b></p> <p>16 <b>relationships with FICO, which they talk about how much</b></p> <p>17 <b>value that they've received and we have those kind of</b></p> <p>18 <b>conversations.</b></p> <p>19 Q. But specifically at Chubb, you cannot identify a</p> <p>20 particular application that was developed faster at Chubb</p> <p>21 because of Blaze?</p> <p>22 <b>A. Only through heuristic conversations, yes.</b></p> <p>23 Q. And you also can't measure or talk about how quickly</p> <p>24 Chubb was able to make changes to its internal computer</p> <p>25 applications because of Blaze. You haven't measured that,</p>	<p>185</p> <p>1 made and whether they were made faster at particular points</p> <p>2 in time because of Blaze?</p> <p>3 <b>A. Only heuristically, yes.</b></p> <p>4 Q. Your sixth bullet talks about rule statements for</p> <p>5 decision can be changed faster, new insurance products can</p> <p>6 be brought to market faster, each product being a unique set</p> <p>7 of rule statements, right?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Can you specifically identify any insurance product that</p> <p>10 Chubb was able to bring to market faster because of Blaze?</p> <p>11 <b>A. No.</b></p> <p>12 Q. And based on all of this, Mr. Baseman, you are not in a</p> <p>13 position to say whether Blaze had any specific impact at all</p> <p>14 on Chubb's revenue or profit, correct?</p> <p>15 <b>A. Mathematically, no.</b></p> <p>16 Q. Okay. So I want to talk about briefly what goes into</p> <p>17 removing Blaze from a computer application. If a large</p> <p>18 company has integrated Blaze into multiple applications, it</p> <p>19 can be complex to remove the software, correct?</p> <p>20 <b>A. Potentially.</b></p> <p>21 Q. And it could take days, months or even years to unravel</p> <p>22 from internal systems, correct?</p> <p>23 <b>A. To unravel -- potentially.</b></p> <p>24 Q. And you're saying potential because there's no typical</p> <p>25 length of time. It's going to depend on the nature of the</p>
<p>184</p> <p>1 right?</p> <p>2 <b>A. Of their existing ones?</b></p> <p>3 Q. Correct.</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Your fourth bullet says, each insurance policy requires</p> <p>6 a unique set of rule statements for deciding on whether to</p> <p>7 offer an applicant a policy and at what price, right?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. But just to be clear, you have not studied the specific</p> <p>10 policies that Chubb offers and figured out exactly which</p> <p>11 rules were being run against which lines of business?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Your fifth bullet is Blaze enhances business agility</p> <p>14 because rule statement changes can be made quickly, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. But you didn't get any information in the course of your</p> <p>17 work at FICO in terms of how quickly Chubb was implementing</p> <p>18 rule changes, right?</p> <p>19 <b>A. Not necessarily, no. So in the -- can I elaborate?</b></p> <p>20 Q. Not necessarily, no, is good for now. Thank you.</p> <p>21 And you also don't have any specific information</p> <p>22 on whether they actually did implement rule changes at</p> <p>23 various points in time, correct?</p> <p>24 <b>A. No. They certainly did make various rule changes, yes.</b></p> <p>25 Q. Can you specifically identify rule changes that were</p>	<p>186</p> <p>1 company, right?</p> <p>2 <b>A. It would be dependent on the nature of how the</b></p> <p>3 <b>integration was done, what their software development life</b></p> <p>4 <b>cycles were, yes.</b></p> <p>5 MS. GODESKY: I'm almost done, Your Honor, if I --</p> <p>6 THE COURT: That's fine.</p> <p>7 BY MS. GODESKY:</p> <p>8 Q. Now, the amount of time you spent working on Blaze has</p> <p>9 shifted over time, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And it has declined in recent years, fair?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. In 2016, you were spending about 80 percent of your time</p> <p>14 on Blaze, right?</p> <p>15 <b>A. 2016? Yes.</b></p> <p>16 Q. By 2021, when you'd provided deposition testimony in</p> <p>17 this case, you were only spending about 10 percent of your</p> <p>18 time on Blaze?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And that's because there was the introduction of this</p> <p>21 new FICO product called Decision Modeler, the cloud-based</p> <p>22 product, right?</p> <p>23 <b>A. Partially, yes.</b></p> <p>24 Q. And for the most part, Decision Modeler, the cloud-based</p> <p>25 product, and Blaze do the same things?</p>

Fair Isaac Corporation v Federal Insurance Company, et al., File No. 16-cv-1054(DTS)

February 17, 2023

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA		239	241
1			<u>I N D E X</u>
2			<u>PAGE</u>
3	Fair Isaac Corporation, a Delaware Corporation,	) File No. 16-cv-1054(DTS)	JEAN-LUC MARCE
4		)	Cross-Examination by Mr. Fleming
5	Plaintiff,	)	Redirect Examination by Ms. Kliebenstein
6	v.	)	254
7	Federal Insurance Company, an Indiana corporation, and ACE American Insurance Company, a Pennsylvania Corporation,	) Courtroom 14W Minneapolis, Minnesota Friday, February 17, 2023 8:40 a.m.	BENJAMIN BAER
8		)	Direct Examination by Mr. Erbele
9		)	Cross-Examination by Mr. Fleming
10	Defendants.	)	Redirect Examination by Mr. Erbele
11		)	300
12			RUSSELL SCHREIBER - DEPOSITION
13			Examination by Ms. Janus
14	BEFORE THE HONORABLE DAVID T. SCHULTZ UNITED STATES DISTRICT COURT MAGISTRATE JUDGE		310
15			BENJAMIN BAER - OFFER OF PROOF
16	(JURY TRIAL PROCEEDINGS - VOLUME III)		Direct Examination by Mr. Erbele
17			Cross-Examination Mr. Fleming
18			367
19			RUSSELL SCHREIBER - DEPOSITION
20			Examination by Ms. Janus
21			401
22	Proceedings recorded by mechanical stenography; transcript produced by computer.		Examination by Mr. Hinderaker
23			438
24	* * *		
25			
1	<u>APPEARANCES:</u>	240	242
2	For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER HEATHER J. KLIBENSTEIN PAIGE S. STRADLEY MICHAEL A. JOSEPH W. DUBIS GABRIELLE L. KIEFER 150 South Fifth Street, #2200 Minneapolis, Minnesota 55402		(IN OPEN COURT)
3			(8:40 a.m.)
4			THE COURT: All right. Good morning, everyone.
5			We're on the record in the matter of Fair Isaac
6			Corporation versus Federal, et al., Civil Number 16-1054.
7	For Defendants: FREDRIKSON & BYRON BY: TERRENCE J. FLEMING LEAH C. JANUS CHRISTOPHER D. PHAM RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402		We're here, all lawyers, assembled outside the
8			presence of the jury so I can tell you what we're going to
9			do regarding the various case studies, white papers and
10			consultant reports. I'm going to tell you first what the
11			ruling is, and then I'm going to give you detailed rationale
12			about why I'm doing what I'm doing.
13			So I'm going to exclude the following exhibits:
14			P1024, P1025, P1028, P295, P932, and P1170.
15			I will allow in P1171, P1172, and P1174 with some
16	Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415		redactions to two of those documents.
17			So, first, as regards P1024, P1025, and P1028,
18			these were produced to the defendants six weeks ago as
19			supplementation of prior discovery, but on the face of the
20			documents they were written in 2021. And so I'm going to
21			exclude them on that basis, not because they should have
22			been produced in discovery, discovery was closed by then,
23			but the supplementation is too late.
24			I will have further comments about the consultant
25			report that is, I believe, P10 -- I believe it's 1024. All
			right.

<p>1 A. No, I'm not familiar with that.</p> <p>2 Q. And you're not familiar with how insurance companies use</p> <p>3 Blaze, are you?</p> <p>4 A. Only from a good educated guess. We -- based on what</p> <p>5 we've been told by our internal teams, about product</p> <p>6 management team, we know what kind of things their insurance</p> <p>7 may use rules for, so -- and we have actually built some</p> <p>8 examples based on insurance claims use cases, but this</p> <p>9 example is more like my examples base on what our</p> <p>10 understanding is, but we have no expertise really in this</p> <p>11 area.</p> <p>12 Q. So when I took your deposition back in January of</p> <p>13 2021 -- if you could turn to page 90 of that deposition</p> <p>14 transcript.</p> <p>15 A. 90. Yes. Go ahead.</p> <p>16 Q. And on lines 16 to 18, in response to the question, "Are</p> <p>17 you familiar with how insurance companies use Blaze</p> <p>18 Advisor," your response was, "No, I'm not."</p> <p>19 A. That's correct. I have no expertise in that.</p> <p>20 Q. Okay. Now, to determine how important or useful that</p> <p>21 Blaze would be to any specific customer, you would have to</p> <p>22 know how the customer is using Blaze, right?</p> <p>23 A. Right.</p> <p>24 Q. Would you not be able to do that without taking a deep</p> <p>25 dive into how their IT systems work," and your answer was, "That's</p>	<p style="text-align: center;"><b>259</b></p> <p>1 correct."</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Now, you don't know how Chubb used Blaze?</p> <p>4 A. Only inferring from all of our use cases we've heard</p> <p>5 about and again from general knowledge in this area.</p> <p>6 Q. Could you turn to page 70?</p> <p>7 A. 70, yes.</p> <p>8 Q. Your response to the question, "Did you ever have any</p> <p>9 knowledge of how the defendants in this case were using the</p> <p>10 Blaze software at your company," your response was "No, I do</p> <p>11 not."</p> <p>12 A. That's correct.</p> <p>13 Q. And that was a truthful answer, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you don't know the Chubb applications that</p> <p>16 used Blaze?</p> <p>17 A. I am not familiar with any specifics in their</p> <p>18 application.</p> <p>19 Q. You don't know how many of Chubb software applications</p> <p>20 use Blaze?</p> <p>21 A. Correct.</p> <p>22 Q. And you don't know the purpose of Chubb software</p> <p>23 applications that use Blaze?</p> <p>24 A. No, I was not involved in their software applications.</p> <p>25 Q. Were you even aware that Chubb was a customer of FICO</p>	<p style="text-align: center;"><b>260</b></p> <p>1 A. Well, I don't have expertise. I don't know exactly how</p> <p>2 they build the system, but from, indirectly, from our per</p> <p>3 marketing, per management says teams, we know indirectly how</p> <p>4 product customers use our products, so we have an overall</p> <p>5 understanding of that.</p> <p>6 Q. Okay. Could you turn to page 111 of your deposition?</p> <p>7 A. 111, yes.</p> <p>8 Q. And starting at line 2 in response to the question, "And</p> <p>9 I guess what I'm saying is to tell how important Blaze is in</p> <p>10 any specific customer, you would have to look at how that</p> <p>11 customer is using Blaze within its systems," and your</p> <p>12 response was "Right." Correct?</p> <p>13 A. Yes, to be precise in one particular case, you have to</p> <p>14 look at the particular case. So, generally speaking, we</p> <p>15 know roughly how the product is used by our customers, but</p> <p>16 only on general terms. For a specific case you have to look</p> <p>17 at the very specific system.</p> <p>18 Q. But in response to my question, when I asked you to</p> <p>19 "tell how important Blaze is in any specific customer, you</p> <p>20 would have to look at how that customer is using Blaze</p> <p>21 within its system," and you said, "Right." Correct?</p> <p>22 A. Correct.</p> <p>23 Q. And in response to the question, "So you wouldn't be</p> <p>24 able to tell this without taking sort of a deep dive into</p> <p>25 how their IT systems work," and your answer was, "That's</p>	<p style="text-align: center;"><b>261</b></p> <p>1 prior to this lawsuit?</p> <p>2 A. Only because I remember, I recall some -- I have vague</p> <p>3 memory of interactions with Chubb. I don't remember the</p> <p>4 years, but I remember the name from past interactions.</p> <p>5 Q. Well, you don't recall having any meeting with Chubb</p> <p>6 personnel?</p> <p>7 A. Not specific meetings, no.</p> <p>8 Q. Now, Blaze is not functional as sold; is that right?</p> <p>9 A. Could you rephrase the question? I'm not sure what you</p> <p>10 mean "functional."</p> <p>11 Q. Sure. It cannot be used out of the box. It's not</p> <p>12 usable as a stand-alone software?</p> <p>13 A. It is. You can be installing Blaze Advisor and start</p> <p>14 using it.</p> <p>15 Q. But Blaze is used with software application that provide</p> <p>16 business rule functionality; is that right?</p> <p>17 A. So you can -- so the typical structure of customer</p> <p>18 applications involve some elements of Blaze Advisor through</p> <p>19 the server and some elements of some various components that</p> <p>20 their customers have bid.</p> <p>21 You could also consider the Blaze Advisor as a</p> <p>22 stand-alone thing and start it and use it as it is, without</p> <p>23 having additional components. It could also be used</p> <p>24 directly without any such master application.</p> <p>25 Q. Could you turn to page 109, please?</p>
---	---	---	---

<p style="text-align: center;">295</p> <p>1 right?</p> <p>2 A. I have an interest to represent the value that I am 3 communicated to by our customers.</p> <p>4 Q. And your goal is for your salespeople to sell as many 5 products that they can at the highest price they can?</p> <p>6 A. I suppose that's true.</p> <p>7 Q. Okay. Now, you're not involved with regard to the sales 8 of Blaze to Chubb, right?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. You didn't have any involvement with Chubb during 11 your time at FICO, correct?</p> <p>12 A. I have not.</p> <p>13 Q. All right. You don't even know the salesperson who was 14 involved in that sale; is that correct?</p> <p>15 A. I don't.</p> <p>16 Q. Now, you don't have any knowledge of Chubb's actual use 17 of Blaze, right?</p> <p>18 A. I do not.</p> <p>19 Q. So you have no idea what value, if any, that Blaze has 20 had with respect to Chubb's use of it?</p> <p>21 A. Not Chubb specifically, no, I don't.</p> <p>22 Q. Okay. Now, Blaze is a business process tool, a decision 23 rule software, and you would agree that it has no 24 functionality until the rules are created and inserted into 25 the software?</p>	<p style="text-align: center;">297</p> <p>1 Q. Okay. So you don't have any knowledge who was involved 2 in the development of the rules that were implemented in 3 Blaze for Chubb's use?</p> <p>4 A. I do not.</p> <p>5 Q. You have no knowledge of the actual rules created and 6 implemented in Blaze by Chubb?</p> <p>7 A. I do not.</p> <p>8 Q. You don't know how many business rules were loaded, how 9 many?</p> <p>10 A. I do not.</p> <p>11 Q. You don't know what type of business rules?</p> <p>12 A. I do not.</p> <p>13 Q. Could you turn to Exhibit 1171.</p> <p>14 A. Yes, sir.</p> <p>15 Q. On the bottom left hand, there's a reference to "New 16 Blaze Advisor 7.4 authoring features empower greater 17 business-user control and ease-of-use without requiring 18 technical assistance" and it "now supports machine learning 19 to further refine business decisions." Right?</p> <p>20 A. Yes.</p> <p>21 Q. And you realize that the Blaze version at issue in this 22 trial is 7.1, not 7.4, right?</p> <p>23 A. I wasn't aware of that, but okay.</p> <p>24 Q. All right. And there are references -- well, let's go 25 to the last page, page 3.</p>
<p style="text-align: center;">296</p> <p>1 A. No different than Microsoft Office.</p> <p>2 Q. Okay. And I wasn't asking about Microsoft Office, but 3 with regard to Blaze in particular.</p> <p>4 A. Again, like no enterprise software, you need to add 5 value to it, yes.</p> <p>6 Q. And the reason is it's a general tool. It requires very 7 distinct authorship and unique rules that connect back to 8 the particular business, right?</p> <p>9 A. Correct, like most software.</p> <p>10 Q. And whether Blaze is useful to a customer depends in 11 part on the quality and usefulness of the actual rules 12 created and implemented by the customer?</p> <p>13 A. That's correct.</p> <p>14 Q. And you would agree with Mr. Marce that the quality of 15 the rules are very significant with regard to the efficacy 16 of the applications that use Blaze?</p> <p>17 A. The efficacy of the software is predominantly controlled 18 by the user itself of the software, that is correct. It is 19 a tool and not a solution.</p> <p>20 Q. Okay. Now, when Chubb purchased Blaze, Chubb had to 21 create and implement the rules to put into the software, 22 correct?</p> <p>23 A. I would presume so. I was not there.</p> <p>24 Q. FICO had no part in it?</p> <p>25 A. Again, I wasn't even at the company at the time.</p>	<p style="text-align: center;">298</p> <p>1 Now, I noted when you were asked about what 2 companies use Blaze that you identified a number of 3 companies except the very first one that's identified in 4 this report, right? And what is that very first company 5 that's identified?</p> <p>6 A. Southwest Airlines.</p> <p>7 Q. Southwest Airlines. Now, why didn't you identify that 8 company as the one that was using Blaze rules?</p> <p>9 A. I missed it, to be honest with you.</p> <p>10 Q. You missed the first one?</p> <p>11 A. I missed the first one.</p> <p>12 Q. It wasn't because of the problems that they've been 13 having, as has been publicized lately?</p> <p>14 A. Actually, no. And to the best of my knowledge, in my 15 conversations with Southwest, our software has nothing to do 16 with their problems.</p> <p>17 MR. FLEMING: Objection, nonresponsive, hearsay.</p> <p>18 THE COURT: That objection is sustained. The 19 answer will be stricken.</p> <p>20 The jury is instructed to disregard the answer.</p> <p>21 BY MR. FLEMING</p> <p>22 Q. Let's look at Exhibit 1172. There's a number of 23 benefits listed on the left. And you don't know if Chubb 24 received any of those benefits through its use of Blaze, do 25 you?</p>

516		518	
1	UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA	1	<u>I N D E X</u>
2			<u>PAGE</u>
3	Fair Isaac Corporation, ) File No. 16-cv-1054(DTS)	2	JANDEEN BOONE
4	a Delaware Corporation, )	3	Cross-Examination (Resumed) By Ms. Godesky 520
5	Plaintiff, ) Redirect Examination By Mr. Hinderaker 538	4	CHRISTOPHER PATRICK IVEY
6	v. )	5	Direct Examination By Ms. Kliebenstein 539
7	Federal Insurance Company,) Courtroom 14W	6	Cross Examination By Ms. Janus 597
8	an Indiana corporation, ) Minneapolis, Minnesota	7	Redirect Examination By Ms. Kliebenstein 612
9	and ACE American Insurance) Tuesday, February 21, 2023	8	RAMESH PANDEY
10	Company, a Pennsylvania ) 8:54 a.m.	9	Cross Examination By Mr. Hinderaker 621
11	Corporation, )	10	Direct Examination 684
12	Defendants. )	11	Recross Examination By Mr. Hinderaker 707
13		12	<u>DEFENDANTS' EXHIBITS</u>
14	BEFORE THE HONORABLE DAVID T. SCHULTZ		D280
15	UNITED STATES DISTRICT COURT MAGISTRATE JUDGE		<u>REC'D</u>
16	(JURY TRIAL PROCEEDINGS - VOLUME IV)		533
17		13	
18		14	
19		15	
20		16	
21		17	
22	Proceedings recorded by mechanical stenography;	18	
23	transcript produced by computer.	19	
24	* * *	20	
25		21	
		22	
		23	
		24	
		25	
517		519	
1	<u>APPEARANCES:</u>		
2	For Plaintiff: MERCHANT & GOULD P.C.	1	8:54 A.M.
3	BY: ALLEN W. HINDERAKER	2	
4	HEATHER J. Kliebenstein	3	(In open court with the Jury present.)
5	PAIGE S. STRADLEY	4	THE COURT: Go ahead and be seated.
6	MICHAEL A. ERBELE	5	Good morning, Members of the Jury. I hope you all
7	JOSEPH W. DUBIS	6	had a good, long weekend.
8	GABRIELLE L. KIEFER	7	I'm going to let you know this now since we know
9	150 South Fifth Street, #2200	8	it, I know it. The Chief Judge of the District has
10	Minneapolis, Minnesota 55402	9	indicated that he is going to some time today, probably this
11		10	morning yet, he will order closure of the courthouse on
12		11	Wednesday and Thursday in light of the incoming, you know,
13		12	snow-mageddon. So I can tell you right now that we won't
14		13	have court on Wednesday and Thursday.
15	O'MELVENY & MYERS LLP	14	I know that we also -- supposedly the snow is
16	BY: LEAH GODESKY	15	going to start here about one o'clock this afternoon. We're
17	ANTON METLITSKY	16	going to be keeping our eye on it and getting information
18	DARYN E. RUSH	17	from a couple of localities, in particular, because I know
19	ROXANA GUIDERO	18	there is some of you that are driving a great distance. And
20	Times Square Tower	19	we'll make that call as things play out, but I'm more
21	7 Times Square	20	inclined to say we end early today so that you can, you
22	New York, New York 10036	21	know, drive through the blizzard in daylight conditions so
23		22	that you get to see it in all its glory, as opposed to
24		23	driving at night. Okay?
25	* * *	24	Yes, ma'am.
		25	JUROR: I have a question. I live a quarter mile

608	610
<p>1 together some of these statements of work, you did not have      2 any direct involvement with the Chubb account during your      3 time at FICO, right?      4 A. Correct. My, my -- I was limited in terms of, I      5 developed the statements of work and worked with them on      6 identifying what they wanted to do, but I didn't actually do      7 any of the implementation at that time.      8 Q. And you don't recall any meetings with Chubb, right?      9 A. I don't.      10 Q. You don't recall any discussions that you had with      11 anyone at Chubb, right?      12 A. Correct. I remember Henry Mirolyuz I think.      13 Q. I think you've answered the question.      14 A. Oh, sorry.      15 Q. Thank you.      16 You never worked on any products or projects for      17 Chubb, correct?      18 A. Correct.      19 Q. You have no familiarity at all with how Blaze was      20 implemented in Chubb, correct?      21 A. I have a -- well, I have a rough understanding about how      22 we were implementing Blaze in insurance companies at the      23 time. But yes, no direct knowledge. I didn't work on the      24 project.      25 Q. You have no familiarity at all, would you say, with how</p>	<p>1 Did I read that correctly?      2 A. You did, yes.      3 Q. You don't know what kind of technology architecture      4 Chubb had, correct?      5 A. You're correct.      6 Q. You testified about the SOWs documenting a transfer of      7 knowledge from FICO to Chubb, right? But you weren't      8 involved in actually implementing any of the projects that      9 were discussed in the SOWs, correct?      10 A. That's correct.      11 Q. And you aren't aware of any situation in which FICO      12 helped Chubb develop a particular rule, correct?      13 A. I mean, I guess I'm aware of it in that we developed the      14 statement of work to develop rules that was paid for, and I      15 would have had a hard time -- I don't know why you would --      16 So I would presume that out of that we delivered      17 rules.      18 Q. But you don't know whether FICO ever helped Chubb      19 develop any particular rule that was implemented in Blaze,      20 right?      21 A. All I can say is, I did not personally develop a rule in      22 Blaze, but again it was listed as a deliverable in some of      23 the statements of work. So that we would help develop      24 rules.      25 Q. And you weren't involved in doing that?</p>
<p style="text-align: center;">609</p> <p>1 Blaze was implemented at Chubb?      2 A. Correct.      3 Q. You don't know about specific projects that Chubb had      4 involving Blaze, correct?      5 A. I do in that again I developed statements of work for      6 those projects.      7 Q. But you don't have any personal knowledge of any of      8 those projects or the details of them?      9 A. I did not develop those projects, no.      10 Q. You talked about some applications that were listed in      11 the statements of work, correct?      12 A. Correct.      13 Q. But you don't know what Chubb applications used Blaze,      14 correct?      15 A. Well, I know the ones that were described in the      16 statements of work used Blaze.      17 Q. Can you look at your March 2019 deposition at page 84,      18 please.      19 A. Sure. March -- did you say page 84?      20 Q. Yes.      21 A. I'm sorry. I'm looking at the page numbers up there.      22 Okay.      23 Q. At line 15 I asked, "Do you know any of the applications      24 that Blaze was used in?"      25 And your answer was, "No."</p>	<p style="text-align: center;">611</p> <p>1 A. That's correct.      2 Q. You testified that when Blaze is delivered from FICO,      3 it's not ready to run, right?      4 A. That's correct.      5 Q. It's like starting with a blank piece of paper?      6 A. That's correct.      7 Q. Blaze needs to be integrated into a customer's      8 preexisting systems, right?      9 A. Correct.      10 Q. And generally, it's taking the business logic, I think      11 you testified, right?      12 A. Correct.      13 Q. And -- go ahead.      14 A. Correct.      15 Q. And the business logic comes from Chubb, right?      16 A. That's correct.      17 Q. That is know-how that Chubb has developed over decades      18 and decades and decades, right?      19 A. That's correct.      20 Q. The subject matter experts that work on the projects are      21 Chubb employees, right?      22 A. That's correct, for their business logic.      23 Q. And Chubb's business logic is completely independent of      24 Blaze, right?      25 A. That's correct.</p>

<p style="text-align: center;"><b>688</b></p> <p>1 A. 1000 plus.</p> <p>2 Q. So now I want to focus on a specific type of software</p> <p>3 product, the rules based software products. Okay?</p> <p>4 A. Yep.</p> <p>5 Q. And if we can go to defendants' Demonstrative 4. Are</p> <p>6 all of these software products on defendants' Demonstrative</p> <p>7 4 rules programs?</p> <p>8 A. Yes. That's correct.</p> <p>9 Q. Have all of these programs been available in one form or</p> <p>10 another since the mid 2000s?</p> <p>11 A. Yes.</p> <p>12 Q. Which of these programs do you personally have</p> <p>13 experience using?</p> <p>14 A. FICO, IBM Operational Decision Manager, Drools, Pega and</p> <p>15 Red Hat Decision Manager.</p> <p>16 Q. So that's all of them, other than the SAS program,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. What's your understanding of the functional difference,</p> <p>20 if any, between Blaze, FICO's program, and the IBM product,</p> <p>21 IBM Operational Decision Manager?</p> <p>22 A. Yeah. Operational Decision Manager from IBM, and FICO</p> <p>23 Blaze, no difference for us. No difference, functionally.</p> <p>24 Q. Okay. How about Blaze's, the product Blaze and Drools?</p> <p>25 Is there a functional difference in your mind between those</p>	<p style="text-align: center;"><b>690</b></p> <p>1 A. Not at all. Absolutely not.</p> <p>2 Q. Now, are all 13 of these applications the same size, or</p> <p>3 do they vary?</p> <p>4 A. No. They vary a lot. CSI Express is a big one, and</p> <p>5 others like TAPS and Premium Booking, these are very small.</p> <p>6 Q. Okay. Is CSI Express the biggest application on this</p> <p>7 chart?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then if we could go to Defendants</p> <p>10 Demonstrative 6, please. So, Mr. Pandey, on defendants'</p> <p>11 Demonstrative 6, there are 1, 2, 3, 4, 5 different</p> <p>12 applications highlighted in gold. What's the significance</p> <p>13 of that?</p> <p>14 A. They are after policies sold, this is the -- these are</p> <p>15 the application. Their function only after the policy is</p> <p>16 sold. They are not part of the policy selling process.</p> <p>17 Q. So these applications don't have anything to do with the</p> <p>18 policy sale process?</p> <p>19 A. That's correct.</p> <p>20 Q. Now, there's another computer application that's being</p> <p>21 discussed in this case called Claims Connect. Are you</p> <p>22 familiar? Have you heard of that application?</p> <p>23 A. Yes, I am familiar with it.</p> <p>24 Q. Has Claims Connect ever used Blaze?</p> <p>25 A. No.</p>
<p style="text-align: center;"><b>689</b></p> <p>1 two products?</p> <p>2 A. No, for what we use for.</p> <p>3 Q. You mean in terms of how you use it at Chubb?</p> <p>4 A. Yeah. How we use it, yeah.</p> <p>5 Q. Do you have to use a software program to run rules in a</p> <p>6 computer application, or can software engineers write code</p> <p>7 for the rules themselves?</p> <p>8 A. The software engineers and software developers, they can</p> <p>9 code by themselves. In fact majority, 99 percent of the</p> <p>10 cases, all software developers, they code the rule by</p> <p>11 themselves.</p> <p>12 Q. So in 99 percent of the applications at Chubb, the</p> <p>13 developers are coding their own rules?</p> <p>14 A. Yes.</p> <p>15 Q. And was that true in the period before the ACE</p> <p>16 acquisition as well?</p> <p>17 A. That's correct. Yes.</p> <p>18 Q. Okay. I want to put up a list of some computer</p> <p>19 applications as defendants' Demonstrative 5, if we could,</p> <p>20 Vanessa. Thank you.</p> <p>21 Is it your understanding that Blaze was used in</p> <p>22 all 13 applications shown on the screen, Mr. Pandey?</p> <p>23 A. Yes.</p> <p>24 Q. Did the number of applications at Chubb using Blaze</p> <p>25 change after the acquisition by ACE?</p>	<p style="text-align: center;"><b>691</b></p> <p>1 Q. Was Blaze ever used in any application used to process</p> <p>2 insurance claims at Chubb?</p> <p>3 A. No.</p> <p>4 Q. And there's some discussion of another application</p> <p>5 called Small Commercial. Are you familiar with that</p> <p>6 application?</p> <p>7 A. Yes.</p> <p>8 Q. Was Blaze ever used in the Small Commercial application?</p> <p>9 A. No. Small Commercial uses a product called Duck Creek,</p> <p>10 which is a very powerful platform, that does enter in, and</p> <p>11 Claim Correct also uses the Duck Creek as a platform.</p> <p>12 Q. Duck Creek is another software program?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember Mr. Hinderaker asking you some questions</p> <p>15 about the CUW-IM application?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And he showed you some emails, Mr. Pandey, do you</p> <p>18 remember that talked about a project analysis and a Phase 1</p> <p>19 and then a Phase 2?</p> <p>20 A. Yeah, that's -- you do the high level design, and then</p> <p>21 you do the material design, and that's how you come up with</p> <p>22 an estimate. And based upon that estimate, then we decide</p> <p>23 if this project worth it or not. Then we put into the</p> <p>24 funding column, and then we get the funding and only when</p> <p>25 they approve, then the project starts.</p>

<p style="text-align: center;"><b>704</b></p> <p>1 developer to write the rules.</p> <p>2 Q. So the developers are coding the rules into Custom Mark?</p> <p>3 A. That's correct.</p> <p>4 Q. How many of the approximately 1500 software applications</p> <p>5 that were used at Chubb before the acquisition used rules in</p> <p>6 some way?</p> <p>7 A. All of them.</p> <p>8 Q. Okay. Now I want to quickly take a look at</p> <p>9 Exhibit P60 -- P960. I apologize. This is the -- I want to</p> <p>10 look at an excerpt from the 2018 Chubb annual report.</p> <p>11 A. Okay.</p> <p>12 Q. This is an excerpt that the jury saw during FICO's</p> <p>13 opening statement on page 15.</p> <p>14 Let me know when you are with me, Mr. Pandey. Do</p> <p>15 you see it on the screen?</p> <p>16 A. Yes, I can see it.</p> <p>17 Q. Okay. So the excerpt says, "In 2018 we continued to</p> <p>18 make significant progress with our small commercial business</p> <p>19 initiative globally. Starting from a relatively small base</p> <p>20 in '17, we produced strong double digit growth throughout</p> <p>21 the year achieving an annual run rate of over 1 billion in</p> <p>22 premium and project this business to exceed several billion</p> <p>23 dollars over time."</p> <p>24 And then it says, "In the US this is a highly</p> <p>25 automated digital experience where 80 percent or more of the</p>	<p style="text-align: center;"><b>706</b></p> <p>1 THE COURT: Overruled.</p> <p>2 BY MS. GODESKY:</p> <p>3 Q. So does this statement have anything to do with</p> <p>4 applications that use Blaze?</p> <p>5 A. No. No. This is the Duck Creek application. Duck</p> <p>6 Creek is the one which I was talking about. This is very</p> <p>7 odd platform which is start to finish, writing, policy,</p> <p>8 everything, forms, rate, underwriting experience,</p> <p>9 everything.</p> <p>10 Q. Mr. Pandey, you started your testimony with</p> <p>11 Mr. Hinderaker by confirming that Blaze has been removed</p> <p>12 from all of the applications at Chubb, correct?</p> <p>13 A. That's yes.</p> <p>14 Q. What programs have replaced Blaze in those applications?</p> <p>15 A. So Red Hat Decision Manager and the new one Drools.</p> <p>16 Q. Drools and Red Hat Decision Manager?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Have you received any complaints as the chief</p> <p>19 architect at Chubb about the switch from Blaze to those</p> <p>20 other rules software programs?</p> <p>21 A. Absolutely not.</p> <p>22 Q. And as the chief architect at Chubb, have you noticed</p> <p>23 any problems with the efficient functioning of your IT</p> <p>24 systems?</p> <p>25 A. No.</p>
<p style="text-align: center;"><b>705</b></p> <p>1 submissions are not touched by humans after they leave the</p> <p>2 agent's office. Technology is a competitive weapon."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So there's a reference here, Mr. Pandey, to small</p> <p>6 commercial businesses. What does that refer to?</p> <p>7 A. It's a small commercial business, a big business like</p> <p>8 you have commercial specialty insurance which has for system</p> <p>9 like CSI Express. Similarly small business, small</p> <p>10 commercial business, it is a totally different division of</p> <p>11 Chubb, which does the insurance for mom and pop shops, say</p> <p>12 flower shop, your plumber, your electrician, 2, 3, 4, 5</p> <p>13 people company.</p> <p>14 They use this system because they want quick.</p> <p>15 They want fast. They want to go run on the weekends and</p> <p>16 nights because that's when they get their time. So this is</p> <p>17 a system straight-through, fast and always available for our</p> <p>18 small commercial customers.</p> <p>19 Q. And is this reference here, Mr. Pandey, to the fact that</p> <p>20 80 percent or more of the submissions are not touched by</p> <p>21 humans, does that have anything to do with applications that</p> <p>22 use Blaze?</p> <p>23 A. No. This is Duck Creek.</p> <p>24 MR. HINDERAKER: Objection, Your Honor. There's</p> <p>25 no foundation for Mr. Pandey.</p>	<p style="text-align: center;"><b>707</b></p> <p>1 Q. As the chief architect at Chubb, are you aware of any</p> <p>2 complaints about the rules not being processed fast enough</p> <p>3 without Blaze?</p> <p>4 A. No.</p> <p>5 MS. GODESKY: Okay. Thank you, Mr. Pandey. No</p> <p>6 further questions from me.</p> <p>7 THE COURT: Mr. Hinderaker, further</p> <p>8 cross-examination?</p> <p>9 MR. HINDERAKER: I do have some, yes.</p> <p>10 <u>RECROSS EXAMINATION</u></p> <p>11 BY MR. HINDERAKER:</p> <p>12 Q. Did you write the annual report of 2018 for Chubb</p> <p>13 Limited?</p> <p>14 A. No, I did not.</p> <p>15 Q. And let me just ask you this question about what's said</p> <p>16 there.</p> <p>17 Separate from what particular technology the</p> <p>18 author may have had in mind, do you agree with the statement</p> <p>19 in the 2018 Chubb Limited annual report that technology is a</p> <p>20 competitive weapon? Yes or no.</p> <p>21 A. Yes.</p> <p>22 Q. Now, if I can find my notes.</p> <p>23 Thank you. I need all the help I can get.</p> <p>24 So, Mr. Pandey, I am not too interested in what</p> <p>25 applications you have that don't use Blaze Advisor. I am</p>

735		737	
1	UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA	1	<u>I N D E X</u>
2			<u>PAGE</u>
3	Fair Isaac Corporation, ) File No. 16-cv-1054(DTS)	2	LAWRENCE WACHS VIA DEPOSITION
4	a Delaware Corporation, )	3	Examination By Ms. Janus 739
5	Plaintiff, )		Examination By Mr. Hinderaker 806
6	v. )	4	THOMAS CARRETTA
7	Federal Insurance Company,) Courtroom 14W	5	Direct Examination By Mr. Hinderaker 843
8	an Indiana corporation, ) Minneapolis, Minnesota		Cross-Examination By Ms. Godesky 892
9	and ACE American Insurance ) Friday, February 24, 2023	6	Redirect Examination By Mr. Hinderaker 934
10	Company, a Pennsylvania ) 9:00 a.m.	7	
11	Corporation, )	8	
12	Defendants. )	9	<u>DEFENDANTS' EXHIBITS</u>
13		10	4 921
14	BEFORE THE HONORABLE DAVID T. SCHULTZ		17 947
15	UNITED STATES DISTRICT COURT MAGISTRATE JUDGE	11	282 945
16	(JURY TRIAL PROCEEDINGS - VOLUME V)		304 918
17		12	
18		13	
19		14	
20		15	
21		16	
22	Proceedings recorded by mechanical stenography;	17	
23	transcript produced by computer.	18	
24	* * *	19	
25		20	
		21	
		22	
		23	
		24	
		25	
736		738	
1	<u>APPEARANCES:</u>		
2	For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER HEATHER J. KLIBENSTEIN PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS GABRIELLE L. KIEFER 150 South Fifth Street, #2200 Minneapolis, Minnesota 55402	1	9:00 A.M.
3		2	
4		3	(In open court with the Jury present.)
5		4	THE COURT: Good morning. Please be seated go
6		5	ahead and be seated.
7	For Defendants: FREDRIKSON & BYRON BY: TERENCE J. FLEMING LEAH C. JANUS CHRISTOPHER D. PHAM RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402	6	All right. Good morning, Members of the Jury.
8		7	Thanks, everyone, for making it in here. I don't know how
9		8	bad your commutes were, but thanks for making it.
10		9	Mr. Hinderaker, are you ready to proceed?
11		10	MR. HINDERAKER: We are, Your Honor.
12		11	THE COURT: All right. Why don't you, you need to
13		12	explain what's going on now?
14		13	MR. HINDERAKER: I do. I do.
15		14	THE COURT: Go right ahead.
16		15	MR. HINDERAKER: Our first witness this morning is
17		16	a gentleman by the name of Larry Wachs, Lawrence Wachs, and
18		17	he will be showing -- his testimony will be presented by
19		18	video, so I will read this introduction about him.
20		19	Lawrence Wachs is a former FICO employee, now
21		20	living in New York, whose deposition was taken February 26,
22		21	2019. His role was in sales; and when he left FICO, his
23		22	title was sales executive. He was with FICO from 2006 to
24		23	2008.
25		24	Mr. Wachs' deposition was taken by Leah Janus, one
		25	of the counsel for defendants. There may be another voice

<p style="text-align: center;"><b>739</b></p> <p>1 on the video and, if so, that will be mine.</p> <p>2 THE COURT: Thank you, Mr. Hinderaker. Go ahead.</p> <p>3 (LAWRENCE WACHS)</p> <p>4 EXAMINATION</p> <p>5 BY MS. JANUS:</p> <p>6 Q. Please state your name for the record?</p> <p>7 A. My name is Lawrence Wachs.</p> <p>8 Q. Are you represented by counsel for FICO here today?</p> <p>9 A. I am.</p> <p>10 Q. I want to start just with a little bit of background information. Where, where did you receive your education and tell us what degrees you obtained.</p> <p>11 A. I obtained a degree, bachelor of arts degree with a major in economics from Brooklyn College in 1968.</p> <p>12 Q. In what year were you born?</p> <p>13 A. 1947.</p> <p>14 Q. Are you currently employed?</p> <p>15 A. No.</p> <p>16 Q. What was your last -- most recent employment?</p> <p>17 A. IBM corporation in sales.</p> <p>18 Q. And what were the years that you were employed for IBM?</p> <p>19 A. 2009 through 2016.</p> <p>20 Q. What was your position with IBM?</p> <p>21 A. Sales.</p> <p>22 Q. What types of, what type of sales?</p>	<p style="text-align: center;"><b>741</b></p> <p>1 A. Exactly right.</p> <p>2 Q. Okay. Let's focus in then on the 2006 to 2008 time period when you were employed with Fair Isaac. Do you recall the month in 2006 that you began your employment with Fair Isaac?</p> <p>3 A. Not specifically, no.</p> <p>4 Q. We'll look at some documents, but it looks like you were there in the beginning of the year 2006, does that --</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. So you started in the beginning of 2006. And when you began at Fair Isaac, what was your title?</p> <p>7 A. Sales executive.</p> <p>8 Q. Okay. What, what did your position involve as a sales executive?</p> <p>9 A. Locating organizations that could take advantage of the FICO software in order to achieve business benefit.</p> <p>10 Q. COURT REPORTER: How do you spell FICO?</p> <p>11 A. F-I-C-O.</p> <p>12 Q. COURT REPORTER: Got it.</p> <p>13 BY MS. JANUS:</p> <p>14 Q. Were you familiar with the software at FICO prior to beginning your work with them?</p> <p>15 A. Yes.</p> <p>16 Q. And how was that?</p> <p>17 A. The RulesPower software was comparable in its</p>
<p style="text-align: center;"><b>740</b></p> <p>1 A. Large programs, technology sales, software sales.</p> <p>2 Q. Okay. Prior to IBM, what was your employment?</p> <p>3 A. Fair Isaac. Fair Isaac.</p> <p>4 Q. What were your years of employment with Fair Isaac?</p> <p>5 A. 2006 to 2008.</p> <p>6 Q. What was your position with Fair Isaac?</p> <p>7 A. Technology sales.</p> <p>8 Q. Did you have a title?</p> <p>9 A. Sales executive, sales executive.</p> <p>10 Q. Prior to your position at FICO, what was your employment?</p> <p>11 A. Prior to fair -- FICO, I was employed by RulesPower, a technology start-up corporation.</p> <p>12 Q. What were the years of that employment?</p> <p>13 A. I'm not sure offhand, but it was ending in 2006, probably beginning in 2005.</p> <p>14 Q. And what was your position with -- what was it? Can you repeat the name?</p> <p>15 A. RulesPower, one word.</p> <p>16 Q. What was your position with RulesPower?</p> <p>17 A. Technology sales.</p> <p>18 Q. So from 1995 through 2016, you were in the technology sales industry as a --</p> <p>19 A. That's correct.</p> <p>20 Q. -- sales executive?</p>	<p style="text-align: center;"><b>742</b></p> <p>1 functionality and in fact, it's a matter record, I believe, that the software at FICO was actually the RulesPower software when FICO acquired the assets of RulesPower.</p> <p>2 Q. Was there a particular software that you were focused on selling during your time at FICO?</p> <p>3 A. Yes.</p> <p>4 Q. What was that?</p> <p>5 A. The name of the software was Blaze Advisor, and it was a decision management rules processing application.</p> <p>6 Q. Who did you work with while you were at FICO?</p> <p>7 A. I reported directly to a gentleman named John Haines, H-A-I-N-E-S.</p> <p>8 Q. What was his position?</p> <p>9 A. Manager of sales for Blaze Advisor for the northeast.</p> <p>10 Q. Once the client selected Fair Isaac as a vendor, what was your role, if any, in the deal going forward?</p> <p>11 A. Once we were advised that we were the selected vendor, we would communicate the salient facts about the sale to our contract administration process, who would have to render a contract that would be appropriate for the deal, reflective of the terms of the deal, including the price. I would work with senior management in establishing what that price would be, which is part of the selection process, but assuming that they've selected us already, we were already past that approval stage.</p>

<p style="text-align: center;"><b>795</b></p> <p>1 A. We were negotiating for a global ELA, correct.</p> <p>2 Q. Were you communicating with Sally about the status of</p> <p>3 those negotiations, do you recall?</p> <p>4 A. I was speaking with Sally fairly regularly at this</p> <p>5 point. It was a big deal, and so Sally was tracking its</p> <p>6 progress, and Sally did participate, it seems, according to</p> <p>7 this note, that we did do an on-site meeting with 30</p> <p>8 attendees to discuss the commercial side of the business and</p> <p>9 get closer to an ELA in 2007.</p> <p>10 Q. It was a big deal, meaning a big deal for FICO?</p> <p>11 A. Size, dollar size.</p> <p>12 Q. Yep. In the entry below the one you just referred to</p> <p>13 with the 30 attendees --</p> <p>14 A. Yes.</p> <p>15 Q. -- the document states, "Larry has been working with</p> <p>16 Chubb to get an ELA through this year. The total after</p> <p>17 credit for global ELA, including COBOL and SmartForms, was</p> <p>18 priced out at 1.5 million. I need to get an update on</p> <p>19 Chubb's response to the proposal." Is that right?</p> <p>20 A. Yes.</p> <p>21 Q. So is the 1.5 million proposal one that you provided</p> <p>22 after entering into the June 2006 portion of the license?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall how you provided that?</p> <p>25 A. No, I don't.</p>	<p style="text-align: center;"><b>797</b></p> <p>1 COBOL and SmartForms and the 1.3 number, where are you</p> <p>2 looking on the document?</p> <p>3 A. That's not contained on this.</p> <p>4 Q. And so there was -- there were conversations between you</p> <p>5 and Chubb that FICO could do the global ELA deal for 1.3</p> <p>6 million if COBOL and SmartForms were taken out of the --</p> <p>7 A. That's my understanding.</p> <p>8 Q. Do you recall who you had those conversations with?</p> <p>9 A. No. It would have been John Haines, and he in turn with</p> <p>10 Bill Waid.</p> <p>11 COURT REPORTER: And then in turn --</p> <p>12 THE WITNESS: And he in turn with Bill Waid.</p> <p>13 BY MS. JANUS:</p> <p>14 Q. Do you recall who at Chubb you had the conversations</p> <p>15 with?</p> <p>16 A. I, I don't have a specific recollection, but I would say</p> <p>17 Sully.</p> <p>18 Q. Did Sully express to you why it was important to Chubb</p> <p>19 to obtain a global license?</p> <p>20 A. It was beyond his purview. He is not a global person.</p> <p>21 Q. So he was just passing on requests from others at Chubb?</p> <p>22 A. That's right.</p> <p>23 Q. Showing you what has been marked as Exhibit 113. This</p> <p>24 is an e-mail from you to Mark Layden, Michael Gordon, Bill</p> <p>25 Waid, John Haines, Russ Schreiber on December 12th, 2006.</p>
<p style="text-align: center;"><b>796</b></p> <p>1 Q. Do you recall who you provided it to?</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Do you recall any e-mails or discussions that you were</p> <p>4 having in this time period with Chubb relating to the global</p> <p>5 ELA?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me what you recall.</p> <p>8 A. One negotiating point was that the 1.5 million was too</p> <p>9 high, and there was a determination to de-limit the ELA by</p> <p>10 two factors. One is a COBOL, that's capitol C-O-B-O-L,</p> <p>11 version of the software, and the second is to de-limit</p> <p>12 SmartForms, which is a functionality specifically included</p> <p>13 as an option, and together those would be \$200,000, which</p> <p>14 would bring down the price of the global ELA to 1.3 million</p> <p>15 dollars, which is consistent with the Waid's original.</p> <p>16 Q. That was consistent with the e-mail we looked at earlier</p> <p>17 today with the 1.6 and the 20 percent discount?</p> <p>18 A. Yeah -- well, Waid wasn't talking -- I don't know</p> <p>19 whether he was talking about a global ELA at that 1.3</p> <p>20 number. This appears to be 1.3 million.</p> <p>21 Q. Right. And we can -- I mean, the record speaks for</p> <p>22 itself.</p> <p>23 A. Yes.</p> <p>24 Q. We did look at an e-mail talking about global and that</p> <p>25 number; but when you're talking about the de-limiting of</p>	<p style="text-align: center;"><b>798</b></p> <p>1 The subject of the e-mail is "Chubb ELA pricing rationale</p> <p>2 from Russ and Larry," the quote pursuit team, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And what do you mean by "the pursuit team"?</p> <p>5 A. The people who are driving the conversation, the sales</p> <p>6 team.</p> <p>7 Q. The conversation with Chubb?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall what this e-mail related to, generally?</p> <p>10 A. Yes. Mark Layden was going to have a personal</p> <p>11 conversation with Folz and Bolen and negotiate the close --</p> <p>12 closure.</p> <p>13 Q. Of the enterprise aspect of the license agreement?</p> <p>14 A. What was remaining for December, yes, for a December</p> <p>15 close.</p> <p>16 Q. So was your purpose in writing this e-mail to update</p> <p>17 them relating to the current status of negotiations?</p> <p>18 A. That's correct.</p> <p>19 Q. At this point on December 12th, the ELA that was being</p> <p>20 negotiated was a global ELA, correct?</p> <p>21 A. I don't know the answer to that. I don't see that.</p> <p>22 Q. Take a look at the back of Exhibit 113, the second page</p> <p>23 of the e-mail. In the third paragraph on that page, you</p> <p>24 say, "Again, we're at 1.05 million for global ELA plus 50K</p> <p>25 for unlimited seats."</p>

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA		957	959
1			
2			<u>I N D E X</u>
3			<u>PAGE</u>
4	Fair Isaac Corporation, a Delaware Corporation,	) File No. 16-cv-1054(DTS)	HENRY MIROLYUZ Examination By Mr. Hinderaker 971
5	Plaintiff,	)	CLAUDIO GHISLANZONI Cross-Examination By Mr. Hinderaker 1046
6	v.	)	Direct Examination By Ms. Godesky 1131
7	Federal Insurance Company,) Courtroom 14W an Indiana corporation,) Minneapolis, Minnesota	) Monday, February 27, 2023	Recross-Examination By Mr. Hinderaker 1161
8	and ACE American Insurance Company, a Pennsylvania Corporation,	) 9:00 a.m.	Redirect Examination By Ms. Godesky 1170
9	Defendants.	)	Recross-Examination By Mr. Hinderaker 1171
10			
11			
12			JOHN TAYLOR Examination By Mr. Hinderaker 1174
13			9
14	BEFORE THE HONORABLE DAVID T. SCHULTZ UNITED STATES DISTRICT COURT MAGISTRATE JUDGE		
15			10
16	(JURY TRIAL PROCEEDINGS - VOLUME VI)		<u>PLAINTIFF'S EXHIBITS</u>
17			11 517 1080
18			12 518 1082
19			13 526 1096
20			14 1002 1088
21			15 1005 1088
22	Proceedings recorded by mechanical stenography; transcript produced by computer.		16 1007 1088
23			17 1008 1088
24	* * *		
25			
		958	960
1	<u>APPEARANCES:</u>		
2	For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER HEATHER J. KLIBENSTEIN PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS GABRIELLE L. KIEFER 150 South Fifth Street, #2200 Minneapolis, Minnesota 55402		1 9:00 A.M.
3			2
4			3 (In open court without the Jury present.)
5			4 THE COURT: Please be seated. Good morning, everyone.
6			5
7	For Defendants: FREDRIKSON & BYRON BY: TERENCE J. FLEMING LEAH C. JANUS CHRISTOPHER D. PHAM RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402		6 The record should reflect that we are in the 7 courtroom outside the presence of the jury. As I understand 8 it, there is a couple of issues, at least one, that we need 9 to take up now before we begin with testimony and that I 10 think is the interrogatory answer.
8			11 Is that correct, Mr. Hinderaker?
9			12 MR. HINDERAKER: Yes, Your Honor.
10			13 THE COURT: Okay. And tell me what it is you plan 14 to put in and, if it's not obvious, why it's relevant.
11			15 MR. HINDERAKER: This is a copy of it.
12			16 THE COURT: Yeah, I've looked at it. Go ahead and 17 bring it up. Well, what are you proposing to do with this 18 exactly?
13			19 MR. HINDERAKER: Well, mister -- well, I guess it 20 comes up in Mirolyuz's deposition because Mr. Mirolyuz is 21 the one who verified it.
14			22 THE COURT: Right.
15			23 MR. HINDERAKER: During the course of the 24 deposition we had an unsigned copy, and during the 25 deposition I asked Mr. Mirolyuz, and he did verify it in the

1021	1023
<p>1 <b>ARP 2, the purpose of this document is to market the</b>  2 <b>business rules technology -- business rules across the</b>  3 <b>enterprise, across the Chubb.</b></p> <p>4 Q. And that was the purpose. And what was the goal to be  5 achieved from that purpose?</p> <p>6 A. <b>We thought that using the business rules can bring the</b>  7 <b>benefits to the IT teams across the Chubb. So the goal is</b>  8 <b>as they become familiar, they would start implementing or</b>  9 <b>using the business rules technology that is making their</b>  10 <b>life simpler.</b></p> <p>11 Q. Okay. So the -- was there a benefit to -- separate from  12 the simpler life of the underwriters, was there a benefit to  13 the business that you were advancing?</p> <p>14 A. <b>Benefit would be, from my view, would be quicker</b>  15 <b>turnaround of the projects; thus, we can deploy the business</b>  16 <b>requests significantly quicker, as was demonstrated by the</b>  17 <b>ARP 1 project.</b></p> <p>18 Q. And from your point of view, what was the benefit to the  19 business when you were able to do that?</p> <p>20 A. <b>Again, the changes or business changes can be deployed;</b>  21 <b>thus, whatever benefit is intended for that particular</b>  22 <b>implementation can be achieved significantly faster.</b></p> <p>23 Q. Does that mean then that new policies can be put to  24 market faster?</p> <p>25 A. <b>Not necessarily, but could be more precise guidance or</b></p>	<p>1 A. <b>Okay.</b></p> <p>2 Q. And you wrote Introduction and Scope 1.1?</p> <p>3 A. <b>Correct.</b></p> <p>4 Q. All right. So you start that with, "The purpose of this</p> <p>5 document is to illustrate." And then tell me what you mean</p> <p>6 by, "Such as increasing agility to implement the business</p> <p>7 change and reducing time to market the new products and</p> <p>8 services."</p> <p>9 First paragraph.</p> <p>10 A. <b>So we believed at the time of --</b></p> <p>11 COURT REPORTER: I lost you.</p> <p>12 THE WITNESS: Sorry. I believed at the time I</p> <p>13 wrote this document that implementation of the business</p> <p>14 rules technology --</p> <p>15 MR. FLEMING: I'm sorry. I thought you were</p> <p>16 saying 40.</p> <p>17 BY MR. HINDERAKER:</p> <p>18 Q. Let's try again.</p> <p>19 A. <b>Yeah. So at the moment of writing this document, I</b>  20 <b>believed that use of the business rules technology would</b>  21 <b>enable IT team to deploy any business request to production</b>  22 <b>or to come to market significantly faster as compared with</b>  23 <b>traditional technologies employed at Chubb at a that point</b>  24 <b>in time.</b></p> <p>25 Q. Say what?</p>
<p>1022</p> <p>1 <b>more precise scoring for that particular example. It</b>  2 <b>doesn't necessarily impact the speed or increase on the</b>  3 <b>business.</b></p> <p>4 Q. Let's back up a second. So the reason for having Blaze</p> <p>5 Advisor is that it has an ultimate benefit for the business.</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. Correct?</p> <p>8 A. <b>Ultimately, yes.</b></p> <p>9 Q. Yes, ultimately. And one of the benefits of, I think</p> <p>10 that you just said, is that it makes people lives easier?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. Correct? And the people that you're referencing are the</p> <p>13 underwriters?</p> <p>14 A. <b>No. I'm referencing the IT teams because they're</b>  15 <b>ultimately responsible. Again, I'm talking -- my role was</b>  16 <b>from the IT perspective.</b></p> <p>17 Q. Okay.</p> <p>18 A. <b>I would not be able to speak for any business benefits</b>  19 <b>achieved through the use of the Blaze Advisor technology or</b>  20 <b>business rules technology. I do speak around the</b>  21 <b>benefits -- that's what I speak in this document, is where</b>  22 <b>the business rules technology could benefit from the IT</b>  23 <b>point of view.</b></p> <p>24 Q. Anyway, that's what I said. 4 of 42 and Bates number</p> <p>25 0004.</p>	<p>1024</p> <p>1 A. <b>It increases the agility of the project and increases --</b>  2 <b>and reducing time to market.</b></p> <p>3 Q. It increases the agility of the business?</p> <p>4 A. <b>Agility of implementation. Again, as you can see</b>  5 <b>specifically here, it is agility to implement to business</b>  6 <b>changes.</b></p> <p>7 <b>So I'm not speaking to the business benefit for</b>  8 <b>this. This specifically says if I have a request from the</b>  9 <b>business to implement particular change, I can deploy it, I</b>  10 <b>can implement it significantly faster and deploy it</b>  11 <b>significantly faster for business to use.</b></p> <p>12 Q. As a consequence, as you say, that reduces the time to</p> <p>13 market for new products and services, correct?</p> <p>14 A. <b>If it's implemented in the Blaze Advisor. Again, big</b>  15 <b>disclaimer.</b></p> <p>16 Q. And you just, you just, you just said the phrase, "if</p> <p>17 implemented in Blaze Advisor."</p> <p>18 And I want to turn you to the next page. And you</p> <p>19 have a heading, "What are business rules?" And then you</p> <p>20 have a description, you know, four paragraphs down,</p> <p>21 "Traditionally embedded" -- "traditionally embedded inside</p> <p>22 code." And then you say -- and then you have the next</p> <p>23 paragraph, "Externalizing the business rules to be a</p> <p>24 structured decision management."</p> <p>25 Is that what you're meaning by if Blaze Advisor is</p>

1101	1103
<p>1 A. <b>Yes.</b></p> <p>2 Q. All right. And this should not be published yet.</p> <p>3 Again, the title of this is Declaration of Zorica</p> <p>4 Todorovic. Have I read that right?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And then if you go to the last page, she declares</p> <p>7 independently of perjury that the foregoing is true and</p> <p>8 correct to the best of her knowledge. Do you see that?</p> <p>9 A. <b>I see that.</b></p> <p>10 Q. And you see a signature?</p> <p>11 A. <b>I see Zorica Todorovic and a signature.</b></p> <p>12 Q. Okay. And then you see in the top line case, and it has</p> <p>13 numbers of a case and a docket number and a filing date.</p> <p>14 Do you see that?</p> <p>15 A. <b>I see that.</b></p> <p>16 MR. HINDERAKER: Your Honor, I move the admission</p> <p>17 of the Declaration of Zorica Todorovic as an admission, also</p> <p>18 as one that was adopted by the defendants because it was</p> <p>19 filed with the court in the context of the court proceedings</p> <p>20 in this case.</p> <p>21 MS. GODESKY: Objection, Your Honor. Hearsay. No</p> <p>22 foundation.</p> <p>23 THE COURT: Let's approach.</p> <p>24 (Sidebar discussion)</p> <p>25 THE COURT: It's a sworn statement under oath</p>	<p>1 Evidence 801(d)(2)(B) as a party admission.</p> <p>2 801 (d)(2)(B) provides in part that the statement</p> <p>3 is not hearsay if the statement is offered against a party</p> <p>4 and is a statement of which the party has manifested an</p> <p>5 adoption on belief or belief in its truth.</p> <p>6 Southern District of New York. Defendants do not</p> <p>7 contest the admissibility of statements by, nor could they,</p> <p>8 the declarations from which these excerpts were taken were</p> <p>9 submitted by defendants at summary judgment. When</p> <p>10 defendants submit these declarations at summary judgment,</p> <p>11 they manifested that they adapted or believed to be true the</p> <p>12 statements contained in these declarations.</p> <p>13 And that's the Southern District of New York 2012.</p> <p>14 MS. GODESKY: Your Honor, I would like an</p> <p>15 opportunity to look at that case law. I think at a minimum</p> <p>16 this isn't something that needs to be resolved with</p> <p>17 Mr. Ghizlanzoni. This is not his statement.</p> <p>18 And I'm not even sure where Mr. Hinderaker is</p> <p>19 going.</p> <p>20 MR. HINDERAKER: I would explain it, if you wish.</p> <p>21 THE COURT: Please.</p> <p>22 MR. HINDERAKER: So we have a party admission and</p> <p>23 what her declaration does is flush out more details about</p> <p>24 the AppCentrica/DWS transfer of knowledge between Canada and</p> <p>25 Australia with respect to this Evolution application.</p>
<p>1 offered by Federal during the course of litigation. So why</p> <p>2 is it hearsay?</p> <p>3 MS. GODESKY: Your Honor, this would be completely</p> <p>4 unprecedented. If you could get documents in this way,</p> <p>5 every declaration and expert report that a party cites in</p> <p>6 support of or in opposition to a summary judgment filing</p> <p>7 could then be admitted at trial.</p> <p>8 MR. HINDERAKER: Actually, not expert reports.</p> <p>9 Just declarations under oath.</p> <p>10 MS. GODESKY: Some expert reports are sworn.</p> <p>11 THE COURT: No.</p> <p>12 MS. GODESKY: But this is a declaration of a</p> <p>13 witness who is not here. They had every opportunity to</p> <p>14 depose, and the idea that you can put in a sworn declaration</p> <p>15 of a witness that is not present in trial, there's</p> <p>16 absolutely no authority for that at all.</p> <p>17 MR. HINDERAKER: May I have a moment, and I will</p> <p>18 get some?</p> <p>19 THE COURT: Sure.</p> <p>20 MR. HINDERAKER: All right.</p> <p>21 (Approaches counsel table and returns)</p> <p>22 MR. HINDERAKER: One case I have comes out of</p> <p>23 bankruptcy court. The objections to the admission of this</p> <p>24 declaration is hearsay, is without merit. This declaration</p> <p>25 is expressly excluded from hearsay by Federal Rule of</p>	<p>1102</p> <p>1 So we have more context for the authentication of</p> <p>2 these documents of which he admittedly is not a party to,</p> <p>3 but the authentication is relatively low, and it is to the</p> <p>4 point, is this what it purports to be. And so we have a</p> <p>5 sworn declaration detailing a little bit about this project</p> <p>6 that makes the authenticity of these other documents and</p> <p>7 emails more authentic, I guess.</p> <p>8 MS. GODESKY: So I don't have an authenticity</p> <p>9 objection.</p> <p>10 THE COURT: I know your objection is foundation</p> <p>11 and hearsay.</p> <p>12 MS. GODESKY: Exactly. I would like more time to</p> <p>13 consider the hearsay issue. But certainly on foundation</p> <p>14 under the rule that FICO argued for and this court adopted,</p> <p>15 Mr. Ghislanzoni would not be the right witness to use this</p> <p>16 with anyway, because as you look at the recitation of facts</p> <p>17 in this declaration, paragraph 5 Ms. Zorica is talking about</p> <p>18 events in 2015.</p> <p>19 That's the time period that she was addressing.</p> <p>20 She was at ACE and this is --</p> <p>21 MR. HINDERAKER: I think we're confusing the</p> <p>22 foundation question. I don't quarrel with the fact that</p> <p>23 Mr. Ghislanzoni doesn't have foundation about this. But</p> <p>24 what I was saying is, when this is out and the court's aware</p> <p>25 of it and you look at the documents that I am showing him</p>

<p style="text-align: right; margin-bottom: 0;"><b>1153</b></p> <p>1 A. <b>Yes.</b></p> <p>2 Q. Based on your understanding of the legacy Chubb IT 3 infrastructure, was Blaze used before -- was Blaze used in 4 the Evolution application in Canada?</p> <p>5 A. <b>So Evolution Canada was making use of Blaze as a 6 software, yes. That's correct.</b></p> <p>7 Q. Was Blaze used after the acquisition in the Evolution 8 application in Australia?</p> <p>9 A. <b>No. We utilized ODM for Evolution in Australia.</b></p> <p>10 Q. Were there conversations at Chubb in spring 2016 after 11 the acquisition about potentially adding Blaze to Evolution 12 Australia?</p> <p>13 A. <b>The original intention was to take the entire technology 14 stack, meaning all the technology of Evolution Canada, and 15 use it in Australia. That was the original intention.</b></p> <p>16 Q. Did that happen?</p> <p>17 A. <b>No.</b></p> <p>18 Q. Why not?</p> <p>19 A. <b>Because of the dispute I had to instruct Russ Hodey and 20 the team in Australia to adopt ODM, informing them that we 21 needed to -- we couldn't have adopted Blaze because of the 22 dispute.</b></p> <p>23 Q. Now, Mr. Ghislazoni, there's been a lot of references 24 to these ChEAR spreadsheets during this trial. Do you have 25 a general familiarity with what they are?</p>	<p style="text-align: right; margin-bottom: 0;"><b>1155</b></p> <p>1 Q. Okay. And then if we can look at the whole chart again. 2 You were also asked questions about the number of 3 rules and transactions that were processed by Blaze, 4 according to this chart, right?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. Based on your decades of experience as an architect at 7 insurance companies, could approximately the same number of 8 rules and transactions have been processed by rules that 9 were coded by software engineers?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. How about by rules that were run by other software 12 products like ODM or Red Hat Decision Manager?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. We can take that down. Thank you, Vanessa. 15 So you testified earlier that by 2020 Blaze had 16 been removed from the last computer application at Chubb, 17 correct?</p> <p>18 A. <b>Correct.</b></p> <p>19 Q. Why did you decide to remove Blaze from all of Chubb's 20 systems in 2019 and is 2020?</p> <p>21 A. <b>Yeah, towards the end of 2018, beginning of 2019, it was 22 clear that the, because of the dispute, our relationship was 23 heavily damaged, and as such it was representing a 24 significant risk to the enterprise.</b></p> <p>25 So we were forced to make a difficult decision to</p>
<p style="text-align: right; margin-bottom: 0;"><b>1154</b></p> <p>1 A. <b>Yes. They used to be used. No longer exist.</b></p> <p>2 Q. As the chief enterprise architect of the combined 3 organization, would you ever rely on a ChEAR spreadsheet to 4 tell you definitively what technology is in use and what 5 technology is not?</p> <p>6 A. <b>No. The purpose of the ChEAR spreadsheet was to have a, 7 a collection of applications that were in the environment, 8 but also application that were potentially going to be 9 created.</b></p> <p>10 Q. Okay. I'd like to put up Plaintiff's Exhibit 517, if we 11 could. Thank you.</p> <p>12 Do you remember looking at this document, 13 Mr. Ghislazoni?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Do you see how there's a column that says number of 16 users, and then it's divided into business and technical?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. And then there's counts of the number of business users, 19 right?</p> <p>20 A. <b>Yes.</b></p> <p>21 Q. Is that a count of the number of business users who are 22 using applications using Blaze, or is it a count of the 23 number of people who are actually going in and using Blaze, 24 the software product?</p> <p>25 A. <b>It is the users of the application.</b></p>	<p style="text-align: right; margin-bottom: 0;"><b>1156</b></p> <p>1 recreate all of those rules that we had spent a significant 2 amount of dollars and time to create in Blaze, to recreate 3 them in another technology.</p> <p>4 Q. Excuse me. How long did it take to remove from a 5 software program like CSI Express the Blaze rules?</p> <p>6 A. <b>It took months. And the reason why it's taking this 7 long is, you saw the numbers, thousands of rules, complex. 8 So think in terms of every rule has to be recreated in a 9 different software product, and we chose Drools.</b></p> <p>10 All of these rules need to be tested. The 11 behavior of the application has to be validated. So we 12 needed to be certain that the application with the migrated 13 rules was behaving in exact same way as before, when it was 14 running Blaze.</p> <p>15 Once all of that is done, then you can go live. 16 All of these efforts takes many weeks.</p> <p>17 Q. As the chief architect at Chubb, do complaints and 18 concerns about the IT infrastructure regularly make their 19 way to you?</p> <p>20 A. <b>Yes.</b></p> <p>21 Q. Since you removed Blaze from all the computer 22 applications at Chubb, has anyone ever raised with you any 23 complaints or concerns about speed or efficiency?</p> <p>24 A. <b>No, no complaints.</b></p> <p>25 Q. Has anyone raised with you any complaints or concerns</p>

<p style="text-align: center;"><b>1157</b></p> <p>1 about technology problems generally in those computer 2 applications? 3 A. <b>No.</b> 4 Q. Now, does Chubb currently have a preferred rules 5 software product that it's using? 6 A. <b>That's correct.</b> 7 Q. Which one? 8 A. <b>It's called Drools and most specific Red Hat Decision</b> 9 <b>Manager, which is a distribution of Drools. What it means</b> 10 <b>is Red Hat, which is also contributor to the open source,</b> 11 <b>decided to provide a supported version, which means they</b> 12 <b>download the open source. They test it. They check for</b> 13 <b>vulnerabilities, risks.</b> 14       They check the performance, and then they provide 15 it to a company like Chubb at a price and so that the 16 company like Chubb can be certain that the product is tested 17 and is secure. But also if there was a problem with the 18 software, Red Hat, as a vendor, would be there to support 19 us. 20 Q. Why did Chubb switch from IBM's ODM product as the 21 preferred vendor to Drools distributed by Red Hat? 22 A. <b>It's linked to this IT strategy that we formulate in</b> 23 <b>2018. In 2018 we decided that it was the right time to</b> 24 <b>embrace open source fully, and therefore we looked at</b> 25 <b>different technologies that were available in the open</b></p>	<p style="text-align: center;"><b>1159</b></p> <p>1 paid for the Drools license? 2 A. <b>Yes. I remember we paid for the first year was just</b> 3 <b>over \$400,000. And then we did a contract, a three-year</b> 4 <b>contract after that, which was just over a million. In</b> 5 <b>total, in four years we spent around \$1.5 million.</b> 6 Q. Approximately, how many computer applications are used 7 today at the combined ACE/Chubb entity? 8 A. <b>Using Red Hat?</b> 9 Q. No. Generally how many are running? 10 A. <b>Oh, we have around 3,000 applications now.</b> 11 Q. And do they all run rules in one way or another? 12 A. <b>They all have rules.</b> 13 Q. And how many of those approximately 3,000 applications 14 are using a rules-based software product like ODM or Drools? 15 A. <b>Oh, less than one percent.</b> 16 Q. And how are you rules run in all of the other 17 applications? 18 A. <b>It's -- the rules are in, written as using a programming</b> 19 <b>language.</b> 20 Q. By the software engineers? 21 A. <b>By the software engineers.</b> 22 Q. Can you think of an example where Blaze was replaced in 23 a computer application with code written by software 24 engineers? 25 A. <b>Well, Evolution is a good one, Canada, because when we</b></p>
<p style="text-align: center;"><b>1158</b></p> <p>1 <b>source community. And Drools was a good one for us to adopt</b> 2 <b>at that time.</b> 3 Q. Were you involved in discussions regarding the efforts 4 to obtain the Red Hat license for the combined ACE/Chubb 5 entity? 6 A. <b>I was.</b> 7 Q. How did you feel at the time about having to find a new 8 rules software license for the computer applications that 9 were running Blaze at the time? 10 A. <b>I wasn't happy. Neither of my colleagues were happy</b> 11 <b>because we were forced to do it.</b> 12 Q. As the chief enterprise architect, do your 13 responsibilities include overseeing budget concerns relating 14 to software investments? 15 A. <b>Yes.</b> 16 Q. When you set out to obtain a replacement rules software 17 license, did you have a dollar range in mind for what you 18 would be willing to pay for the replacement rules software 19 from Red Hat? 20 A. <b>Well, at the time I thought that possibly having a</b> 21 <b>budget of a million dollar would have been appropriate,</b> 22 <b>given the usage of rules at Chubb.</b> 23 Q. Now is Chubb currently paying to access Drools? 24 A. <b>Yes, we are paying Red Hat.</b> 25 Q. And are you familiar with the amounts that Chubb has</p>	<p style="text-align: center;"><b>1160</b></p> <p>1 <b>decided to -- we were forced to remove Blaze, we coded the</b> 2 <b>rules using programming language. There was an initial</b> 3 <b>component already in the application that software engineers</b> 4 <b>had developed. So we extended that component that was</b> 5 <b>developed by our software engineers.</b> 6 Q. Are you talking about Evolution in Canada? 7 A. <b>Evolution Canada, yes.</b> 8 Q. Thank you. The jury heard Mr. Wachs of FICO testify by 9 video on Friday that someone at Chubb told him that Blaze 10 allowed Chubb to do in one afternoon something that would 11 normally take months and hundreds of thousands of dollars if 12 done by IT. 13       Do you remember hearing that testimony? 14 A. <b>I do.</b> 15 Q. Based on your experience as the chief architect at two 16 insurance organizations, did you ever observe Blaze allowing 17 Chubb to do in one afternoon what otherwise would have taken 18 months and hundreds of thousands of dollars to do? 19 A. <b>Never experienced that.</b> 20 Q. Did anyone at Chubb ever suggest to you that Blaze had 21 so dramatically improved their ability to run rules in 22 computer applications? 23 A. <b>No.</b> 24 Q. Now, the jury has also heard some testimony about the 25 concept of rate of adoption of technology. What does that</p>

<p style="text-align: center;"><b>1161</b></p> <p>1 refer to?</p> <p>2 A. <b>So rate of adoption is, of technology, it describes a</b>  <b>3 scenario where technology adoption is expanding. So it's,</b>  <b>4 the utilization, it's growing. And it's growing, and it can</b>  <b>5 grow at different speeds obviously.</b></p> <p>6 Q. From the perspective of a technology architect, if a      7 rules engine could allow an insurance company to do in an      8 afternoon what it would normally take months to do, what      9 would you expect to see in terms of the rate of adoption?</p> <p>10 A. <b>To grow pretty fast, if that was possible.</b></p> <p>11 Q. And what's your understanding of the rate of adoption of      12 rules software at the combined ACE/Chubb entity?</p> <p>13 Approximately what percentage of the computer applications      14 are running rules?</p> <p>15 A. <b>Using a rules engine?</b></p> <p>16 Q. Yes.</p> <p>17 A. <b>Less than one percent, so very low rate of adoption.</b></p> <p>18 MS. GODESKY: Thank you. I have no further      19 questions right now.</p> <p>20 THE COURT: Mr. Hinderaker, any recross?</p> <p>21 MR. HINDERAKER: Yes, please. Thank you.</p> <p>22 <u>RECROSS-EXAMINATION</u></p> <p>23 BY MR. HINDERAKER:</p> <p>24 Q. Hello again.</p> <p>25 A. <b>Hello.</b></p>	<p style="text-align: center;"><b>1163</b></p> <p>1 Q. That was so hard to get out, I don't know.</p> <p>2 My point was that given your roles, you do not      3 have day-to-day communications with the people who are      4 responsible for the applications that contained Blaze      5 Advisor and are used in connection with selling insurance      6 for the specialty insurance line of the former Chubb      7 Corporation or for the commercial insurance line of the      8 former Chubb Corporation?</p> <p>9 A. <b>We don't have Blaze Advisor in our landscape anymore.</b></p> <p>10 Q. Now I'm speaking of the time frame 2016 through 2020.</p> <p>11 A. <b>Okay. Well, I had pretty frequent interaction with my</b>  <b>12 team in the global organization as part of my role.</b></p> <p>13 Q. Understood, with your team in the global organization.</p> <p>14 Does your team include Henry Mirolyuz?</p> <p>15 A. <b>When Henry was here, yes, he was part of my --</b></p> <p>16 Q. And did you have frequent conversations with Henry      17 Mirolyuz?</p> <p>18 A. <b>I had a number of communicates with Henry Mirolyuz.</b></p> <p>19 Q. You're aware from being in the courtroom that in 2006,      20 amongst all the rules management software vendors available      21 at the time, Chubb &amp; Son chose Blaze Advisor to be the rules      22 management technology, correct?</p> <p>23 A. <b>Yes, I'm aware.</b></p> <p>24 Q. And then in 2016 you started your own review, after the      25 merger, and in the beginning stages with that TDA review,</p>
<p style="text-align: center;"><b>1162</b></p> <p>1 Q. Before the acquisition in 2016 you were with ACE      2 Limited, correct?</p> <p>3 A. <b>Yes.</b></p> <p>4 Q. And your responsibilities were international?</p> <p>5 A. <b>International.</b></p> <p>6 Q. And your international responsibilities did not include      7 the United States.</p> <p>8 A. <b>That's correct.</b></p> <p>9 Q. And for the period of time from 20 -- from 2006 to the      10 acquisition, is it fair to say that you had no conversations      11 with anybody at Chubb Limited, whether it was Mr. Sullivan,      12 Owen Williams, Henry Mirolyuz, about their experience using      13 Blaze Advisor in connection with selling specialty      14 insurance?</p> <p>15 A. <b>I did not know those individuals.</b></p> <p>16 Q. That's my point. And in 2017, then, your      17 responsibilities became global and -- but somebody else,      18 Mr. Pandey, is responsible for North America.</p> <p>19 A. <b>In my team.</b></p> <p>20 Q. Yes. So you don't have day-to-day contact with the      21 people from either legacy Chubb -- well with legacy Chubb or      22 combined Chubb who are responsible for maintaining and using      23 and operating the applications that contain Blaze Advisor in      24 connection with selling insurance, correct?</p> <p>25 A. <b>Would you, would you mind asking the question again?</b></p>	<p style="text-align: center;"><b>1164</b></p> <p>1 although you disagreed, I guess, with Mr. Tonkin's      2 conclusions, in that review as a work-in-progress in April      3 Blaze Advisor was identified as the superior technology over      4 ODM.</p> <p>5 A. <b>They had the highest score.</b></p> <p>6 Q. And then as your decision processes continued, you      7 started to look at how to position the entire enterprise      8 from the point of view of technology, correct?</p> <p>9 A. <b>Yes. You are referring to the, defining the new</b>  <b>10 technology standards for the new Chubb.</b></p> <p>11 Q. Right. And then that led you to the conclusion to adopt      12 an open source technology as an enterprise-wide standard.</p> <p>13 A. <b>That happened after we completed that effort.</b></p> <p>14 Q. Of course. After you completed the effort, one of the      15 conclusions from the effort was to adopt as an      16 enterprise-wide strategy an open source platform technology?</p> <p>17 A. <b>Yeah. In 2019 we made that decision.</b></p> <p>18 Q. Yes, I agree. And so when you then went to Drools, the      19 decision to go to Drools was driven by the earlier decision      20 to go to open source.</p> <p>21 A. <b>It was contextual.</b></p> <p>22 Q. Yes. In other words, at that point once the decision      23 was open source, the alternatives of vendors like Blaze      24 Advisor or Duck Creek or Pegasus or ODM, all of those      25 third-party vendor choices are off the table because</p>

Fair Isaac vs. Federal Insurance Company, et al.

February 28, 2023 - Volume VII

1	UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA	1198	1200
2			
3	Fair Isaac Corporation, ) File No. 16-cv-1054(DTS)		
4	a Delaware Corporation, )		
5	Plaintiff, )		
6	v. )		
7	Federal Insurance Company, ) Courtroom 14W		
8	an Indiana corporation, ) Minneapolis, Minnesota		
9	and ACE American Insurance ) Wednesday February 15 2023		
10	Company, a Pennsylvania ) 8:50 a.m.		
11	Corporation, )		
12	Defendants. )		
13			
14	BEFORE THE HONORABLE DAVID T. SCHULTZ UNITED STATES DISTRICT COURT MAGISTRATE JUDGE		
15			
16	(JURY TRIAL PROCEEDINGS - VOLUME VII)		
17			
18			
19			
20			
21			
22	Proceedings recorded by mechanical stenography; transcript produced by computer.		
23	* * *		
24			
25			
	1199		1201
1	<u>APPEARANCES:</u>		
2	For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER HEATHER J. KLIBENSTEIN PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS GABRIELLE L. KIEFER 150 South Fifth Street, #2200 Minneapolis, Minnesota 55402		
3		1	February 28, 2023
4		2	8:50 A.M.
5		3	
6		4	(In open court without the Jury present.)
7	For Defendants: FREDRIKSON & BYRON BY: TERENCE J. FLEMING LEAH C. JANUS CHRISTOPHER D. PHAM RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402		
8		5	THE COURT: Good morning. Please be seated.
9		6	All right. Good morning, everyone. We're on the
10		7	record outside the presence of the jury. I understand the
11		8	parties have an issue with respect to some of the
12		9	interrogatory answers that are intended to come in -- into
13		10	evidence today.
14		11	So, Ms. Kliebenstein, or whomever on that side,
15		12	come on up.
16		13	MS. KLIBENSTEIN: Thank you. Good morning, Your
17		14	Honor.
18		15	We have, we have three -- two and a half issues,
19		16	if you will. So one of them is the interrogatories, but I
20		17	think I'll start with something else first. The defendants
21		18	have objected to our inclusion in Mr. Zoltowski's
22		19	demonstrative of revenues associated with the Chubb
23		20	Insurance Company Canada. And as we -- they say that
24		21	it's -- it was decided on summary judgment, that it's not in
25		22	the case anymore. But as we heard from Mr. Pandey and
	* * *	23	Mr. Mirolyuz, that application -- the application running in
		24	that entity in Canada is running out of Raleigh, North
		25	Carolina, and we have outlined the case for infringement in

1342	1344
1 amounts paid by Chubb's customers to purchase insurance 2 policies, right? 3 <b>A.</b> By the customers of whatever writing company that was, 4 yes. 5 <b>Q.</b> And you included all of the money paid by Chubb's 6 customers to purchase policies if it -- if those policies 7 ever ran through a computer application that included Blaze, 8 right? 9 <b>A.</b> If it was under one of the writing entities, yes. 10 <b>Q.</b> Okay. So I just want to talk a little bit about what 11 that means. 12 So hypothetically, if you had a business in Texas 13 that paid \$10,000 for a workers' compensation policy from 14 Chubb, if that policy ran through the TAPS application, in 15 2017 you would include that \$10,000 premium in your \$21 16 billion number. Fair? 17 <b>A.</b> Yes. That's correct. 18 <b>Q.</b> And that's because TAPS has a Blaze as a component, 19 right? 20 <b>A.</b> The policy touched Blaze in some way. 21 <b>Q.</b> And you were asked to include all premium dollars that 22 ran through these computer applications that included Blaze, 23 right? 24 <b>A.</b> Well, I was asked to determine what that amount would 25 be. And like I said, I would have looked at costs as well.	1 numbers to account for Blaze's role in each particular 2 application, correct? 3 <b>A.</b> No, I have not. 4 <b>Q.</b> And you also haven't done anything to adjust those 5 revenue numbers to account for the role that folks at Chubb 6 had in coming up with the particular rules that were 7 deployed through Blaze, right? 8 <b>A.</b> I didn't have enough information that would allow me to 9 quantify that. 10 <b>Q.</b> So you did not do it, correct? 11 <b>A.</b> I could not do it. 12 <b>Q.</b> You did not do it? 13 <b>A.</b> Well, could not translates to did not, then yes. 14 <b>Q.</b> And your methodology also doesn't adjust the revenue 15 numbers at all to account for costs that Chubb would have 16 incurred implementing Blaze, right, like time spent training 17 software engineers on how to use the product, correct? 18 <b>A.</b> I didn't have the appropriate information to do so, so I 19 did not. 20 <b>Q.</b> And you also didn't do anything to investigate whether 21 Blaze was successfully or efficiently functioning in these 22 particular computer applications. It was if it's a computer 23 application including Blaze, I'm including all the dollars, 24 right? 25 <b>A.</b> I'm not aware of any information related to it being not
1343	1345
1 If I had the appropriate data to deduct them, I would have. 2 <b>Q.</b> But when you're talking about revenue, if dollars were 3 paid for a policy that ran through an application including 4 Blaze, you included the dollars? 5 <b>A.</b> Yes. That's correct. 6 <b>Q.</b> You did not do any analysis to determine specifically 7 how Blaze was utilized in connection with particular 8 policies, correct? 9 <b>A.</b> I mean, other than understanding how the applications 10 worked. 11 <b>Q.</b> But you didn't go through and look at particular 12 policies and figure out whether -- whatever role Blaze had 13 with that particular purchase, right? 14 <b>A.</b> No. I think there were hundreds of thousands of 15 policies, no. 16 <b>Q.</b> And you didn't do anything to adjust your written 17 premium numbers based on Blaze's particular role in an 18 application as compared to other technology components, 19 correct? 20 <b>A.</b> That's not my burden based upon the law, as I understand 21 it. 22 <b>Q.</b> I'm not asking you about the burden or the law. The 23 judge is going to instruct the jury on the law. 24 My question is whether it's correct that you 25 haven't done anything to adjust your gross written premium	1 functioning correctly or any problems with it for any of the 2 policies that I quantified gross written premiums for. 3 <b>Q.</b> But as a damages expert, Mr. Zoltowski, you didn't sit 4 down and conduct an investigation into how well functioning 5 Blaze was in these particular computer applications, 6 correct? 7 <b>A.</b> I'm not sure I understand what you mean by "how well it 8 was functioning." 9 <b>Q.</b> You didn't sit down and do an investigation into how 10 efficient Blaze was in each particular computer application. 11 You didn't render opinions on that, correct? 12 <b>A.</b> I would need to know what you mean by "efficient" too. 13 I mean, the latency -- I mean, what is the -- 14 <b>Q.</b> Did you do a latency analysis, Mr. Zoltowski? 15 <b>A.</b> There wasn't that information provided, I don't believe. 16 <b>Q.</b> So that's a no? 17 <b>A.</b> No. When you don't have the information to do the 18 analysis, then you can't do the analysis. 19 <b>Q.</b> Okay. I want to look at your slide 12, which is an 20 example of one of these slides that talks about revenue from 21 eight different ACE writing companies. Do you remember 22 these slides? 23 <b>A.</b> I do. 24 <b>Q.</b> And you talked about ACE American, Westchester and the 25 others, right?

<p>1346</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> So just to be clear, the only application at Chubb that</p> <p>3 used Blaze and included revenue from ACE writing companies</p> <p>4 is CUW Inventory Management, correct?</p> <p>5 <b>A.</b> I'm sorry. Could you repeat that question?</p> <p>6 <b>Q.</b> The only application at Chubb that used Blaze and</p> <p>7 included revenue from these ACE writing companies is CUW</p> <p>8 Inventory Management, correct?</p> <p>9 <b>A.</b> The only application?</p> <p>10 <b>Q.</b> Correct.</p> <p>11 <b>A.</b> I'm not sure that's true.</p> <p>12 <b>Q.</b> Let me see if I can refresh your recollection,</p> <p>13 Mr. Zoltowski.</p> <p>14 So I handed you an excerpt from one of your expert</p> <p>15 reports, and if you look at page 30, footnote B, that might</p> <p>16 help.</p> <p>17 <b>A.</b> You said footnote B?</p> <p>18 <b>Q.</b> On page 30, yes.</p> <p>19 <b>A.</b> Yeah.</p> <p>20 <b>Q.</b> Do you see footnote B from your report, Mr. Zoltowski,</p> <p>21 reads, "The CUW application is the only application for</p> <p>22 which defendants reported gross written premium from ACE</p> <p>23 American subsidiaries."</p> <p>24 Do you see that?</p> <p>25 <b>A.</b> I do.</p>	<p>1348</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> And you agreed with Ms. Kliebenstein that revenue is not</p> <p>3 the same thing as profit, correct?</p> <p>4 <b>A.</b> That's correct.</p> <p>5 <b>Q.</b> And so if you want to talk about an insurance company's</p> <p>6 profit, you have to take the revenue dollars, that \$21</p> <p>7 billion, and then you have to subtract the costs and the</p> <p>8 expenses, correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 <b>Q.</b> And costs at an insurance company, that's going to be</p> <p>11 money that goes out the door when a customer has a claim,</p> <p>12 right, and you need to pay the customer?</p> <p>13 <b>A.</b> Yes. That's correct.</p> <p>14 <b>Q.</b> Things like employee salaries?</p> <p>15 <b>A.</b> Yes.</p> <p>16 <b>Q.</b> Rent on all of your office buildings, things like that,</p> <p>17 right?</p> <p>18 <b>A.</b> Depending on if they're attributable to the premiums</p> <p>19 that are at issue here, yes.</p> <p>20 <b>Q.</b> And your \$21 billion figure doesn't include costs or</p> <p>21 expenses at all, correct?</p> <p>22 <b>A.</b> Yeah. I did not have the information to allow me to do</p> <p>23 that accurately.</p> <p>24 <b>Q.</b> And you are not here, Mr. Zoltowski, to opine that there</p> <p>25 is a nexus or a connection between Blaze and defendants'</p>
<p>1347</p> <p>1 <b>Q.</b> So does that refresh your recollection that the CUW</p> <p>2 application is the only application that shows revenue from</p> <p>3 the ACE writing companies?</p> <p>4 <b>A.</b> It does, assuming I didn't make a mistake. We typically</p> <p>5 check all of these things when we write our reports, so I</p> <p>6 would assume that's true, but I would want to check the</p> <p>7 interrogatories just to confirm.</p> <p>8 <b>Q.</b> But that's what you wrote in your report, right?</p> <p>9 <b>A.</b> Yes.</p> <p>10 <b>Q.</b> And you haven't investigated or offered opinions on the</p> <p>11 particular people at Chubb who had access to the CUW</p> <p>12 Inventory Management System, right? That's outside the</p> <p>13 scope of your opinions.</p> <p>14 <b>A.</b> I'm not sure I understand your question about "the</p> <p>15 people."</p> <p>16 <b>Q.</b> Have you done -- have you investigated, as part of your</p> <p>17 expert work in this case, Mr. Zoltowski, the particular</p> <p>18 people at Chubb who had access to CUW Inventory Management?</p> <p>19 <b>A.</b> I looked at the information available. I don't believe</p> <p>20 there was any information that would allow me to investigate</p> <p>21 those particular individuals.</p> <p>22 <b>Q.</b> So you don't know?</p> <p>23 <b>A.</b> Based on what was available, no.</p> <p>24 <b>Q.</b> Okay. So as we said, revenue is money that comes in the</p> <p>25 door at an insurance company, right?</p>	<p>1349</p> <p>1 revenue, correct?</p> <p>2 <b>A.</b> I understand there's other witnesses and information</p> <p>3 that will be doing that. I was not asked to do that.</p> <p>4 <b>Q.</b> And so that means you are not here to offer opinions on</p> <p>5 how much, if any, of this \$21 billion in revenue is actually</p> <p>6 connected to Blaze as opposed to all the other things that</p> <p>7 make Chubb Chubb, right? That's someone else.</p> <p>8 <b>A.</b> That would have been part of my analysis if there was</p> <p>9 information to do so. I did not endeavor to do so, though.</p> <p>10 <b>Q.</b> You do recognize, though, that there are plenty of</p> <p>11 tangible and intangible assets at Chubb other than Blaze</p> <p>12 that have contributed to that \$21 billion figure, correct?</p> <p>13 <b>A.</b> I've never said there were no costs associated with the</p> <p>14 gross written premiums here. I just didn't have appropriate</p> <p>15 information to do so accurately.</p> <p>16 <b>Q.</b> But you also acknowledge that there are other assets at</p> <p>17 Chubb that contribute to revenue, right, other than Blaze?</p> <p>18 <b>A.</b> I'm sure there may be other things that contribute to</p> <p>19 writing a premium, insurance premium.</p> <p>20 <b>Q.</b> And your \$21 billion figure just represents every single</p> <p>21 dollar that was paid for an insurance policy that ran</p> <p>22 through those computer applications that had Blaze in it</p> <p>23 during the relevant period, correct?</p> <p>24 <b>A.</b> Yes. That's correct.</p> <p>25 <b>Q.</b> Okay. Thank you.</p>

<p>1374</p> <p>1 MR. HINDERAKER: Maybe, Your Honor, before we get 2 to that, I can be very clear about the purpose for which his 3 testimony is being offered.</p> <p>4 THE COURT: Sure.</p> <p>5 MR. HINDERAKER: His purpose -- his testimony is 6 being offered to inform the jury regarding the process of 7 selling insurance, regarding the things that matter in that 8 process to selling more insurance or selling less insurance.</p> <p>9 He has been engaged to -- and he has experience in 10 not only front line underwriting but corporate product 11 development, so he has knowledge with respect to those 12 things. And he has, as you heard, studied 10,000-plus pages 13 of the defendants' documents to analyze from his expertise 14 how the defendants were using -- how the defendants used 15 Blaze Advisor, in their words.</p> <p>16 He is not offered a Blaze Advisor expert or as 17 somebody who with Blaze Advisor expertise connects Blaze 18 Advisor to the selling of insurance. We've heard 19 Mr. Baseman, Mr. Ivey, Mr. Baer, Mr. Marce regarding the 20 qualities or attributes that Blaze Advisor brings to the 21 industry.</p> <p>22 And now we're looking it -- taking it from the 23 other side, with Mr. Whitener telling us, well, how does the 24 insurance industry work and how is insurance sold, and he 25 has experience with technology. I'm not pretending him to</p>	<p>1376</p> <p>1 The last slide, "FICO Blaze Advisor added 2 significant value to defendants' business."</p> <p>3 Slide 73, "Defendants needed Blaze Advisor to sell 4 insurance in underpenetrated markets."</p> <p>5 And when you look at the text of his disclosed 6 reports, the headers in the reports are Blaze Advisor's 7 Contribution to Gross Written Premium, Chubb's use of Blaze 8 Advisor Contributes to Gross Written Premium.</p> <p>9 And we have an objection to Mr. Whitener 10 testifying about the value or contribution of Blaze or even 11 decision management software generally, because I would like 12 to do a voir dire of the expert and show that he has no 13 experience in that area. And so you cannot create an expert 14 by having them study in the context of litigation.</p> <p>15 He needed to be retained with the expertise that's 16 required under Rule 702.</p> <p>17 THE COURT: But his experience and qualifications, 18 if I'm remembering Judge Wright's order correctly, I believe 19 she said that no -- no objection was made to his experience 20 or qualifications and then denied the motion to exclude 21 based on the objections that were made.</p> <p>22 Am I accurately recalling what she said?</p> <p>23 MS. GODESKY: She said that it was raised in 24 reply, and so she was not going to consider it. But it is 25 absolutely not waived because you have no obligation to</p>
<p>1375</p> <p>1 be a Blaze Advisor, but he does -- he has studied the 2 defendants' use of Blaze Advisor, if that's more clear.</p> <p>3 THE COURT: And I'm assuming that all of the 4 opinions you intend to elicit are the ones that were 5 disclosed in his report.</p> <p>6 MR. HINDERAKER: Absolutely.</p> <p>7 THE COURT: I suspect I know what I'm going to 8 hear from Ms. Godesky, and that is that you described him as 9 testifying to the value of Blaze Advisor, but maybe I'll 10 hear something else, but I understand what you're telling 11 me.</p> <p>12 MR. HINDERAKER: Yeah. And that value 13 proposition, if you will, is going to come from his analysis 14 of these case-specific facts. So it comes from, if you 15 will, the bottom up, the case-specific facts, not some Blaze 16 Advisor expertise top-down.</p> <p>17 THE COURT: And he's not offering damage numbers?</p> <p>18 MR. HINDERAKER: He's not offering damage numbers.</p> <p>19 THE COURT: Ms. Godesky?</p> <p>20 MS. GODESKY: Your Honor, slide 3 in their 21 presentation for Mr. Whitener --</p> <p>22 THE COURT: I may be wrong.</p> <p>23 MS. GODESKY: Summary of opinions. "Blaze Advisor 24 added significant value to the process of selling insurance 25 and hence added significant value to defendants' business."</p>	<p>1377</p> <p>1 challenge qualifications under Rule 702 in a <i>Daubert</i> motion, 2 and we can do so now.</p> <p>3 THE COURT: I understand.</p> <p>4 MR. HINDERAKER: Again, if I could repeat myself a 5 bit. It's -- looking at the defendants' documents without 6 having expertise in the insurance industry doesn't tell you 7 the picture that comes with studying how defendants use 8 Blaze Advisor with that knowledge from the insurance 9 industry.</p> <p>10 So why did -- why did something matter -- why did 11 what the defendants were doing with Blaze Advisor matter?</p> <p>12 It mattered because in the process of selling insurance, 13 that effect -- that attribute affects the outcome of the 14 selling process.</p> <p>15 So I don't mind the jury being quite clear that 16 he's not a Blaze Advisor expert. He's an insurance industry 17 expert.</p> <p>18 MS. GODESKY: Your Honor, his opinions go far 19 beyond that as disclosed on the slides and in his report.</p> <p>20 If he was simply offering opinions about, this is the 21 process of selling insurance and certain things are 22 important in the process of selling insurance, that might be 23 appropriate.</p> <p>24 But he was disclosed as an expert who offered 25 opinions on how Blaze contributed to gross written premium</p>

<p style="text-align: right;">1378</p> <p>1 at Chubb, and he does not have the expertise to offer those 2 opinions.</p> <p>3 MR. HINDERAKER: Well, that's not exactly accurate 4 because the testimony is that if you can -- that defendants, 5 in fact, achieved certain outcomes using Blaze Advisor, by 6 the defendants own statements. And those outcomes mattered 7 in the process of selling insurance because of the elements 8 of the process of selling insurance.</p> <p>9 So you take -- you take what the defendants have 10 acknowledged as why they were using it, what they were 11 trying to achieve, and you apply it to the process of 12 selling insurance and why it matters in the process of 13 selling insurance. And you reach a conclusion that it had 14 an impact. It was significant.</p> <p>15 He's not quantifying it in terms of -- he's not 16 touching it to revenue. That was a different expert. He's 17 just saying, how does this matter to the process of selling 18 insurance, from the defendants' own experience.</p> <p>19 THE COURT: Understood. I understand your 20 objection. I'm going to allow him to testify. You can 21 bring this all out in cross. You can make objections during 22 his testimony, if you wish. But I'll hear the testimony or 23 we'll begin with the testimony, and we'll cross that bridge 24 here when we get to it.</p> <p>25 MS. GODESKY: Your Honor, just for the record,</p>	<p style="text-align: right;">1380</p> <p>1 So let's bring the jury in.</p> <p>2 <b>IN OPEN COURT</b></p> <p>3 THE COURT: Go ahead and be seated.</p> <p>4 Mr. Whitener, come on back up to the witness 5 stand, if you would.</p> <p>6 THE WITNESS: Mic is on?</p> <p>7 MR. HINDERAKER: Yep. Sounds good. We can hear 8 you.</p> <p>9 BY MR. HINDERAKER:</p> <p>10 Q. Let's turn to -- let's turn to a discussion of the 11 different kinds of insurance products in the marketplace so 12 we start to get that understanding.</p> <p>13 If we could go to slide 7, please.</p> <p>14 This slide obviously shows four different kinds of 15 insurance. And is that -- that's accurate? We can put -- 16 we can put insurance products into these four categories?</p> <p>17 A. You can. I generally refer to these as market segments.</p> <p>18 Q. Market segments. All right.</p> <p>19 Well, I'd like to just go through each one so we 20 have an understanding of the marketplace with respect to 21 insurance products. So if -- I think I can control this for 22 a moment.</p> <p>23 Let's go to specialty insurance. Tell us what it 24 is, please.</p> <p>25 A. Specialty insurance is a type of commercial insurance</p>
<p style="text-align: right;">1379</p> <p>1 I'll lodge the additional objection that this is 2 particularly prejudicial given his lack of qualifications 3 and the fact that this all goes to the disgorgement question 4 that's going to be decided by the Court, not the jury.</p> <p>5 And now they're hearing testimony from someone who 6 is, I think admittedly by plaintiffs, not qualified to 7 testify about Blaze Advisor.</p> <p>8 With that, is he presented as qualified in 9 insurance? Is that the qualification that the Court is 10 presenting? I'm just trying to understand if he's allowed 11 to testify, what is the qualification?</p> <p>12 THE COURT: He's testified as to the width and 13 breadth of his experience and expertise in the insurance 14 industry and his knowledge of the use of technology in 15 underwriting, generally speaking. Beyond that, he has Blaze 16 specific knowledge derived from the documents.</p> <p>17 So on that basis and not knowing exactly what's 18 coming out of the witness' mouth, I'm going to let him 19 testify. And I understand your concern, but let me be 20 blunt. All of this is things that would have been 21 beneficially raised on <i>Daubert</i> motions, and if not at 22 <i>Daubert</i> motions, then raised in motions in limine, and we 23 could have addressed it then.</p> <p>24 And I didn't use the word "waiver." I didn't say 25 you'd waived it.</p>	<p style="text-align: right;">1381</p> <p>1 generally segmented out from an organizational standpoint 2 inside of the underwriting functions of a company, the 3 corporate underwriting functions, even front line 4 underwriting functions.</p> <p>5 Specialty insurance is insurance for unique risk, 6 and I'll use the phrase "as opposed to mainstream 7 commercial." Commercial insurance, relatively less complex. 8 Special insurance, very complex. A good example of this 9 might be directors and officers insurance. This usually 10 revolves around various types of professional liability or 11 unique risk.</p> <p>12 There was a time in the past where the Bengal 13 tiger, the white Bengal tiger at the Cincinnati Zoo was 14 loaned, I believe, to the San Diego Zoo and the specialty 15 marketplace of the general insurance property casualty 16 industry provided that coverage.</p> <p>17 A good example would be medical malpractice. 18 Another good example is architects and engineers, people 19 that require liability protection because of -- because of 20 mistakes.</p> <p>21 Q. In general, does specialty insurance require a higher 22 level of underwriting expertise?</p> <p>23 A. Yes.</p> <p>24 Q. And explain why, please.</p> <p>25 A. The risk -- the risks are significantly higher. The</p>

1438		1440	
1	UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA	<b>I N D E X</b>	
2		PAGE	
3	Fair Isaac Corporation, ) File No. 16-cv-1054(DTS)	<b>RANDOLPH BICKLEY WHITENER</b>	
4	a Delaware Corporation, )	4	Direct Examination (Resumed) By Mr. Hinderaker 1442
5	Plaintiff, )	4	Cross Examination By Ms. Godesky 1532
6	v. )	5	Redirect Examination By Mr. Hinderaker 1599
7	Federal Insurance Company,) Courtroom 14W	<b>N. WILLIAM PAUL WAID</b>	
8	an Indiana corporation,) Minneapolis, Minnesota	6	Direct Examination By Mr. Hinderaker 1606
9	and ACE American Insurance Company, a Pennsylvania ) Wednesday, March 1, 2023	7	
10	Corporation,) 9:00 a.m.	8	
11	Defendants. )	<b>PLAINTIFF'S</b>	
12		9	1113 REC'D 1675
13		10	1116 1702
14	BEFORE THE HONORABLE DAVID T. SCHULTZ	11	
15	UNITED STATES DISTRICT COURT MAGISTRATE JUDGE	12	
16	(JURY TRIAL PROCEEDINGS - VOLUME VIII)	13	
17		14	
18		15	
19		16	
20		17	
21	Proceedings recorded by mechanical stenography;	18	
22	transcript produced by computer.	19	
23	* * *	20	
24		21	
25		22	
		23	
		24	
		25	
1439		1441	
1	<u>APPEARANCES:</u>		
2	For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER HEATHER J. KLIBENSTEIN PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS GABRIELLE L. KIEFER 150 South Fifth Street, #2200 Minneapolis, Minnesota 55402	1	March 1, 2023 9:00 A.M.
3		2	
4		3	<b>(In open court without the Jury present.)</b>
5		4	THE COURT: Good morning. Be seated.
6		5	We'll take up the issue with respect to
7	For Defendants: FREDRIKSON & BYRON BY: TERENCE J. FLEMING LEAH C. JANUS CHRISTOPHER D. PHAM RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402	6	Mr. Waid's testimony over the lunch hour. It is clear to
8		7	me he is not getting on the stand before then. All right?
9		8	MS. GODESKY: Yes.
10		9	THE COURT: Okay.
11		10	THE CLERK: All rise for the jury.
12	O'MELVENY & MYERS LLP BY: LEAH GODESKY ANTON METLITSKY DARYN E. RUSH ROXANA GUIDERO Times Square Tower 7 Times Square New York, New York 10036	11	<b>(Jury enters.)</b>
13		12	
14		13	
15		14	<b>(In open court with the Jury present.)</b>
16		15	THE COURT: Go ahead and be seated.
17		16	Okay. Good morning. Thanks, everyone, for
18	Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415	17	braving our slippery roads.
19		18	Mr. Hinderaker, are you ready to proceed?
20		19	MR. HINDERAKER: I am, Your Honor.
21		20	THE COURT: Go ahead and recall Mr. Whitener
22		21	back.
23		22	MR. HINDERAKER: I would call Mr. Whitener.
24		23	THE COURT: Whitener. Come on up, Mr. Whitener.
25		24	THE WITNESS: Thank you.
		25	THE COURT: Just remind you as you're walking up,

<p style="text-align: center;"><b>1530</b></p> <p>1 <b>responding to statutory and regulatory changes? Can I stay</b>  2 <b>more in compliance with both those statutory and those</b>  3 <b>underwriting -- corporate underwriting requirements? Can I</b>  4 <b>be easier to do business with? Can I take on -- can I</b>  5 <b>scale? Can I take on more business with my existing very,</b>  6 <b>very valuable staff?</b></p> <p>7 <b>And if I do that, take on more business with my</b>  8 <b>valuable staff, but I reduce the amount of use of human</b>  9 <b>capitol in the "buying, book process," I can now</b>  10 <b>concentrate on agents and brokers and spending time with</b>  11 <b>them in developing that relationship, my conclusion is that</b>  12 <b>Blaze Advisor deployed by agents in some places, not all,</b>  13 <b>added significant value to the defendants' business of</b>  14 <b>selling insurance.</b></p> <p>15 Q. Okay. And in drawing this judgment about the  16 significant value of selling insurance, do I understand you  17 correctly that the attributes or the features that resulted  18 in the significant value were the ones you just described:  19 Speed, agility, precision and so forth?</p> <p>20 A. <b>That is correct.</b></p> <p>21 Q. Did you have -- we saw in some of the slides of the  22 defendants where some other insurance companies had done  23 the work to quantify or measure the improvements that they  24 realized with Blaze Advisor.</p> <p>25 Did you have that -- any kind of information like</p>	<p style="text-align: center;"><b>1532</b></p> <p>1 <b>"bind, book, issue" which is how I describe the process of</b>  2 <b>selling insurance where deployed.</b></p> <p>3 MR. HINDERAKER: Thank you for your time.</p> <p>4 THE WITNESS: You're welcome.</p> <p>5 THE COURT: Ms. Godesky.</p> <p>6 MS. GODESKY: Thank you.</p> <p>7 THE WITNESS: Thank you. I'm overburdened here.</p> <p>8 <b>CROSS EXAMINATION</b></p> <p>9 BY MS. GODESKY:</p> <p>10 Q. Good morning, Mr. Whitener.</p> <p>11 A. <b>Good morning, Ms. Godesky.</b></p> <p>12 Q. You understand I represent the defendants in this case,  13 right?</p> <p>14 A. <b>I do, in fact.</b></p> <p>15 Q. This is your first time testifying as an expert in  16 court, right?</p> <p>17 A. <b>That is correct.</b></p> <p>18 Q. So no court or arbitrator has ever qualified you as an  19 expert in rules-based software?</p> <p>20 A. <b>This is correct.</b></p> <p>21 Q. Your advanced degree is a college degree from Virginia  22 Commonwealth University where you majored in education,  23 correct?</p> <p>24 A. <b>I have a degree in education, a Bachelor of Science</b>  25 <b>from Virginia Commonwealth University. I struggle with the</b></p>
<p style="text-align: center;"><b>1531</b></p> <p>1 that available to you?</p> <p>2 A. <b>I did not.</b></p> <p>3 Q. Is it necessary for you to have that kind of  4 quantification of information to draw your judgment that  5 Blaze Advisor added significant value?</p> <p>6 A. <b>There are two different questions there in the</b>  7 <b>underwriting world I live in. The first is, did it? The</b>  8 <b>second is, how much did it? Okay? I had more than enough</b>  9 <b>information, documentation, 10,000-plus pages, to determine</b>  10 <b>that it did it.</b></p> <p>11 <b>I don't need a tape measurer or a stopwatch to</b>  12 <b>know that computers executing transactions is faster than</b>  13 <b>humans because I was a human underwriter, and I've worked</b>  14 <b>with many companies to -- to deploy technology into those</b>  15 <b>processes. I don't know -- I don't need to measure</b>  16 <b>variation in compliance because I know a computer system</b>  17 <b>with a set of facts is going to make the same decision with</b>  18 <b>those facts every time, and I know -- I have been out on</b>  19 <b>underwriting audits and audited underwriting functions --</b>  20 <b>that humans cannot do that.</b></p> <p>21 Q. So overall as a -- overall, Blaze Advisor added  22 significant value in the selling of insurance by the  23 defendants?</p> <p>24 A. <b>My opinion is that Blaze Advisor added significant</b>  25 <b>value to the -- to the defendants' process of executing the</b></p>	<p style="text-align: center;"><b>1533</b></p> <p>1 <b>word "advanced."</b></p> <p>2 Q. It's a degree in education from Virginia Commonwealth,  3 right?</p> <p>4 A. <b>That is correct.</b></p> <p>5 Q. You've never worked for a software company, correct?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. And you've never worked as a software developer,  8 correct?</p> <p>9 A. <b>Mostly correct -- well, no. I'm sorry. Correct.</b></p> <p>10 Q. During direct examination beginning of yesterday, you  11 talked about the work you've done at various insurance  12 companies, right?</p> <p>13 A. <b>Various insurance companies and various vendors who</b>  14 <b>sell goods and services to the insurance companies.</b></p> <p>15 Q. Okay. So I want to walk through the chronology of your  16 employment that Mr. Hinderaker took you through and asked  17 you a few different questions.</p> <p>18 So you were at the Hartford, which is an  19 insurance company, from the late 1970s to the early 1990s?</p> <p>20 A. <b>Mid-1993.</b></p> <p>21 Q. Okay. And you did not do any work with decision  22 management software at that job because the software did  23 not exist in that time period, correct?</p> <p>24 A. <b>Correct.</b></p> <p>25 Q. And then you were at the Prudential, which is another</p>

	1534		1536
1 insurance company, right?		1 A. <b>Correct.</b>	
2 A. <b>Again, correct.</b>		2 Q. And while you were there -- you talked about this on	
3 Q. And that was in the mid-1990s?		3 direct a little bit -- you had a role in selecting Duck	
4 A. <b>Yes.</b>		4 Creek as the policy administration software for American	
5 Q. And there was no use of decision management software		5 Reliable, correct?	
6 there, correct?		6 A. <b>Yes, but I became responsible for the implementation</b>	
7 A. <b>As you would define decision management software, that</b>		7 <b>using Duck Creek.</b>	
8 <b>is correct.</b>		8 Q. Okay. And you -- you left, though, after about a year	
9 Q. The rules software programs we're all here to talk		9 at the company, correct?	
10 about, right?		10 A. <b>I believe it was a little closer -- something in that</b>	
11 A. <b>Correct.</b>		11 <b>vicinity.</b>	
12 Q. Then you moved on to a mid-sized personal auto		12 Q. Yeah. You were only there from '04 to '05, right?	
13 insurance company in the late 90's to the early 2000s,		13 A. <b>Yes.</b>	
14 right?		14 Q. So you didn't see the implementation of Duck Creek	
15 A. <b>Correct.</b>		15 because you moved on?	
16 Q. And there was no decision management software		16 A. <b>Correct.</b>	
17 experience there because that company had decided to write		17 Q. And you didn't work with any rules-based software	
18 all of its business rules in code by software engineers,		18 programs while you were at American reliable, like ODM or	
19 right?		19 Blaze or Drools, right?	
20 A. <b>Initially, yes.</b>		20 A. <b>Right.</b>	
21 Q. And you've never been a member of a technology		21 Q. Then you went to another insurance company, Unitrin	
22 department at an insurance company, correct?		22 Specialty, from '05 to '09, right?	
23 A. <b>Correct.</b>		23 A. <b>Correct.</b>	
24 Q. That means you've never worked as a software engineer		24 Q. They sell insurance, but no experience with decision	
25 or computer developer who writes code for an insurance		25 management software at Unitrin, right?	
	1535		1537
1 company, right?		1 A. <b>Correct.</b>	
2 A. <b>Partially correct -- mostly correct.</b>		2 Q. Then you went to a small technology services company	
3 Q. And you have no experience sitting down and writing		3 called Discoverture Solutions?	
4 rules into computer applications using high-level		4 A. <b>Correct.</b>	
5 programming language because to the extent that was		5 Q. And that position didn't have anything to do with	
6 happening at the insurance companies you worked at, other		6 rules-based software?	
7 people were doing that, correct?		7 A. <b>That also is correct.</b>	
8 A. <b>Mostly correct.</b>		8 Q. And so as we've seen over the course of your career,	
9 Q. And you've never been a technology architect for an		9 you've worked a few different insurances companies but	
10 insurance company, correct?		10 never at Chubb, right, or ACE?	
11 A. <b>Correct.</b>		11 A. <b>Correct.</b>	
12 Q. Okay. So then your next job was, you were a		12 Q. And so at the time when you sat down to form your	
13 business -- you were at a business process outsourcer in		13 expert opinions in this case -- and your first report,	
14 Montana in the early 2000s, right?		14 right, Mr. Whitener, was in April of 2019?	
15 A. <b>Absolutely correct.</b>		15 A. <b>Correct.</b>	
16 Q. And that company did not use rules-based software?		16 Q. You had never used any decision management software,	
17 A. <b>Correct.</b>		17 correct?	
18 Q. Then in the mid-2000s, you joined a midsize property		18 A. <b>Agreed.</b>	
19 and casualty insurance company called American Reliable,		19 Q. And that necessarily includes Blaze?	
20 right?		20 A. <b>That necessarily includes Blaze.</b>	
21 A. <b>Again correct.</b>		21 Q. So when you sat down to provide all those expert	
22 Q. And you were there from '04 to '05?		22 opinions in this case about the value of Blaze to Chubb,	
23 A. <b>Yes.</b>		23 you had never used Blaze or any computer applications that	
24 Q. No decision management software in use at the time you		24 included Blaze, correct?	
25 joined, correct?		25 A. <b>That is correct.</b>	

		1538	1540
1	Q. You had never used IBM ODM?		1 A. <b>Yes.</b>
2	A. <b>Correct.</b>		2 Q. And you're questioned by Chubb's lawyers for the first
3	Q. You had never used Drools?		3 time, correct?
4	A. <b>Correct.</b>		4 A. <b>Correct.</b>
5	Q. And you had never used Red Hat Decision Manager?		5 Q. And one day before your deposition about those 75 pages
6	A. <b>Correct.</b>		6 of opinions that you'd offered, FICO's lawyers had you sit
7	Q. So that first report you submitted in this case in		7 down and watch a Webex presentation about Blaze. Sound
8	April 2019, with all the appendices, it was more than 50		8 right?
9	pages. Sound right?		9 A. <b>Mostly.</b>
10	A. <b>I'm fairly certain I can say yes to that one.</b>		10 Q. So that was the first demonstration ever of how Blaze
11	Q. And it was all about how Blaze contributes to revenue		11 works, and it was done after all your opinions were in,
12	at Chubb, right? All the opinions you just offered with		12 those 75 pages of opinions, right?
13	Mr. Hinderaker about speed and ease of doing business and		13 A. <b>Yes.</b>
14	agility, correct?		14 Q. Now, you didn't actually use Blaze during this
15	A. <b>Mostly.</b>		15 demonstration. You weren't coming up with the rules and
16	Q. But when you wrote those 50 pages of opinions, you		16 then putting them into the software yourself. That was
17	could not speak to what Blaze looks like to someone who is		17 someone at FICO, right?
18	going in and using it to implement rules, correct?		18 A. <b>In the demonstration?</b>
19	A. <b>Correct.</b>		19 Q. Correct.
20	Q. And you had never used a computer application that		20 A. <b>I created a rule.</b>
21	incorporated Blaze?		21 Q. You created a rule, but mostly it was someone at FICO
22	A. <b>Correct.</b>		22 running the demo, right?
23	Q. Then about a month later, you did your second report in		23 A. <b>Correct.</b>
24	this case, and that was due in May of 2019, right?		24 Q. And the demo was about 90 minutes?
25	A. <b>Sounds right.</b>		25 A. <b>I couldn't remember.</b>
		1539	1541
1	Q. And that was another 25 pages.		1 Q. Why don't you look in the binder in front of you.
2	A. <b>Okay.</b>		2 There is a copy of your deposition transcript from June
3	Q. Focused on the value of Blaze to Chubb?		3 2019.
4	A. <b>Approximately.</b>		4 A. <b>I'm there.</b>
5	Q. Focused on the value of Blaze to Chubb?		5 Q. And why don't we look at page 21 to see if that
6	A. <b>Again, correct.</b>		6 refreshes your recollection?
7	Q. So then as of May 2019, you submitted 75 pages of		7 A. <b>21 in the box, correct?</b>
8	written material about the value of Blaze to Chubb, but you		8 Q. Yes, please.
9	still hadn't seen the process of implementing rules into		9 A. <b>Correct.</b>
10	Blaze, correct?		10 Q. A 90-minute demonstration?
11	A. <b>Would you restate the date, please?</b>		11 A. <b>Correct.</b>
12	Q. As of May 2019, that second report, 75 pages of		12 Q. Okay. And that demo is not particular to any
13	opinions about the value of Blaze to Chubb, but you still		13 particular company's use of Blaze, right?
14	hadn't seen the process of implementing rules, correct?		14 A. <b>It was not.</b>
15	A. <b>At some point in that time frame, I had been given a</b>		15 Q. And it wasn't specific to the insurance industry in any
16	<b>demonstration of Blaze by FICO, but I can't date stamp that</b>		16 way?
17	<b>quite as precisely as you're asking.</b>		17 A. <b>No, it was not.</b>
18	Q. Well, you were scheduled to provide sworn deposition		18 Q. The demo had nothing to do with Chubb's use of Blaze?
19	testimony in this case on June 27th, 2019. Does that sound		19 A. <b>Correct.</b>
20	right?		20 Q. And, in fact, the demo was actually a college
21	A. <b>Yes.</b>		21 admissions scenario, correct?
22	Q. Okay. And that's the process the jury has heard about		22 A. <b>Yes.</b>
23	where you have to come to a conference room and sit down,		23 Q. So when you sat down to provide sworn testimony to
24	provide sworn testimony about all the opinions you've		24 Chubb's lawyers about these 75 pages of opinions, that
25	offered, right?		25 90-minute demo on college admission scenarios from FICO was

<p style="text-align: center;"><b>1542</b></p> <p>1 the full extent of your firsthand experience of Blaze, 2 correct? 3 <b>A. Yes, but --</b> 4 Q. "Yes" is good enough for now. Thank you, Mr. Whitener. 5 Do you have a general understanding that 6 peer-reviewed literature is a term that's used for 7 literature that has been read and vetted by people other 8 than those who wrote it? 9 <b>A. Yes.</b> 10 Q. And the idea behind peer-reviewed literature is you 11 have someone looking at the publication and vetting your 12 ideas and conclusions to make sure they're sound, right? 13 <b>A. Yes.</b> 14 Q. And you have never published any peer-reviewed 15 literature on decision management software or rules 16 software, right? 17 <b>A. Correct.</b> 18 Q. And you haven't conducted any studies about the nature 19 and impact of rules software on businesses, correct? 20 <b>A. I'm sorry. Restate that, please.</b> 21 Q. You have not conducted any studies, scientific studies, 22 on the impact of rules software in business, correct? 23 <b>A. Correct.</b> 24 Q. And before you rendered your expert opinions in this 25 case about the value of Blaze, you did not read or consider</p>	<p style="text-align: center;"><b>1544</b></p> <p>1 <b>A. Correct.</b> 2 Q. So let's talk about what you reviewed. You reviewed 3 testimony from Benjamin Baer at FICO, right? 4 <b>A. Correct.</b> 5 Q. We've heard from him. He was one of FICO's first 6 witnesses, and he works in FICO marketing, right? 7 <b>A. Yes.</b> 8 Q. You also read testimony from Chris Ivey, he was another 9 witness from FICO in this trial, right, and he talked about 10 all those statements of work with Chubb? 11 <b>A. Yes.</b> 12 Q. And then you read the testimony of Lawrence Wachs, a 13 FICO/Blaze salesperson, right? 14 <b>A. Again correct.</b> 15 Q. And then you reviewed the deposition testimony of one 16 witness from Chubb, right? That's Henry Mirolyuz. 17 <b>A. No. There were two depositions.</b> 18 Q. That was the only Chubb witness whose deposition 19 transcript FICO's lawyers sent you, correct? 20 <b>A. Correct.</b> 21 Q. And before you rendered all your opinions about the 22 value of Blaze to Chubb, you didn't review the testimony of 23 Mr. Claudio Ghislanzoni, correct? 24 <b>A. Correct.</b> 25 Q. Nor the testimony of Mr. Ramesh Pandey, correct?</p>
<p style="text-align: center;"><b>1543</b></p> <p>1 any peer-reviewed literature about the value of rules 2 software, correct? It's not something you cited. 3 <b>A. Correct.</b> 4 Q. And before you rendered your expert opinions in this 5 case, you didn't read or consider any peer-reviewed 6 literature examining the use of using high-level 7 programming language to code rules in businesses, right? 8 <b>A. Correct.</b> 9 Q. And you aren't aware of, and you haven't identified, 10 any literature or studies that compare the efficiency of 11 using rules software to the efficiency of having software 12 engineers write code themselves, right? 13 <b>A. Correct.</b> 14 Q. Now, before you rendered your expert opinions about all 15 the value that Blaze brought to Chubb, you didn't speak to 16 anyone at Chubb who had actually worked with Blaze, right? 17 <b>A. Correct.</b> 18 Q. And you said during direct examination that you read 19 some deposition testimony from witnesses in this case, 20 right? 21 <b>A. I did.</b> 22 Q. Those transcripts were sent to you by FICO's lawyers? 23 <b>A. Yes.</b> 24 Q. You didn't read every deposition transcript in this 25 case, but you read the ones that they sent you, correct?</p>	<p style="text-align: center;"><b>1545</b></p> <p>1 <b>A. Correct.</b> 2 Q. And you also didn't review the testimony of any Chubb 3 underwriters, right, folks like Alissa Theberge or Mike 4 Schraer, right? 5 <b>A. Correct.</b> 6 Q. And you didn't read the testimony of anyone at Chubb 7 involved in the process of writing rules using Blaze, like 8 Ellen Garnes? 9 <b>A. Correct.</b> 10 Q. Before you rendered your opinions in 1029, you also 11 didn't speak to any other people in the insurance industry, 12 people at companies other than Chubb, about their 13 experiences with Blaze or decision management software? 14 <b>A. Correct.</b> 15 Q. You didn't do a formal survey, right? 16 <b>A. Correct.</b> 17 Q. And you didn't have any informal conversations either, 18 correct? 19 <b>A. Correct.</b> 20 Q. Now, we saw some anecdotes about how other insurance 21 companies use Blaze. Mr. Hinderaker showed you that on the 22 screen, right? 23 <b>A. Yes.</b> 24 Q. We're going to come back to that, but before you 25 rendered your expert opinions, you didn't try to do a study</p>

<p style="text-align: center;"><b>1546</b></p> <p>1 examination how the country's largest insurance companies 2 are using rules-based software as opposed to coding by 3 software engineers, right? 4 A. <b>Correct.</b> 5 Q. You also haven't conducted any survey of FICO's 6 customers regarding their experience with Blaze, right? 7 A. <b>Correct.</b> 8 Q. And you haven't spoken to other rules software vendors 9 about their software programs, correct? 10 A. <b>Mostly correct.</b> 11 Q. Now, Mr. Whitener, as a general baseline, based on your 12 direct testimony, I'm assuming we can agree that the 13 insurance business is complex, right? 14 A. <b>I have described it that way before. There are aspects</b> 15 <b>that are very, very simple, but generally speaking, it is a</b> 16 <b>complex industry.</b> 17 Q. Okay. And I want to talk about some of the factors 18 that drive an insurance company's ability to earn revenue, 19 okay? So the relationship between a broker and an agent, 20 on one hand, and the insurance company on the other, that 21 can affect where customers want to buy their insurance, 22 right? 23 A. <b>Yes.</b> 24 Q. And Blaze doesn't have anything to do with the 25 interpersonal relationships that Chubb employees build with</p>	<p style="text-align: center;"><b>1548</b></p> <p>1 A. <b>I would say that different, but it is an important</b> 2 <b>factor.</b> 3 Q. And Blaze has no role in Chubb's billing process, 4 right? 5 A. <b>I saw no documentation that indicated that.</b> 6 Q. Meaning you haven't seen anything connecting Blaze to 7 billing? 8 A. <b>Correct.</b> 9 Q. It's also very important that an insurance company have 10 a strong process for handling claims once they come in, 11 right? 12 A. <b>Correct.</b> 13 Q. And that's because brokers and agents aren't going to 14 have any desire to sell policies on behalf of insurance 15 companies that's not efficiently handling claims, right? 16 A. <b>Correct.</b> 17 Q. And it's important that an insurance company pays the 18 right amount of money when a claim comes in, and they do so 19 pretty fast? 20 A. <b>I'm going to say it slightly differently. It is</b> 21 <b>important that insurance companies pay the right amount,</b> 22 <b>and it's important that they get that right amount to the</b> 23 <b>policyholder quickly.</b> 24 Q. And Blaze, I think as you said during your direct 25 examination, was not used in the claims handling side of</p>
<p style="text-align: center;"><b>1547</b></p> <p>1 brokers and agents, right? 2 A. <b>Mostly correct.</b> 3 Q. Blaze isn't taking people out to the ball game or out 4 to dinner or a networking lunch, right? 5 A. <b>Correct.</b> 6 Q. And the insurance products that a company sells are 7 also part of what determines the success of an insurance 8 company, right? 9 A. <b>Yes.</b> 10 Q. Can be a meaningful contributor to what makes a company 11 successful, right? 12 A. <b>Without products, there is no revenue, correct.</b> 13 Q. And insurance products are developed based on the 14 expertise of the insurance company and the know-how of the 15 people who work there, correct? 16 A. <b>In combination with statutory requirements of the</b> 17 <b>states in which they decided to do business and the state</b> 18 <b>requirements for the products they decided.</b> 19 Q. Fair enough. And you have not identified any 20 particular insurance product that was specifically 21 developed at Chubb because of Blaze, right? 22 A. <b>Correct.</b> 23 Q. An error-free billing process is also an important 24 factor in attracting customers to an insurance company, 25 right?</p>	<p style="text-align: center;"><b>1549</b></p> <p>1 Chubb at all, right? 2 A. <b>Correct.</b> 3 Q. Underwriting is another aspect of how insurance 4 companies make money. You were an underwriter, right? 5 A. <b>I was, yes.</b> 6 Q. And from your experience as an underwriter, you know 7 that your personal human judgment is crucial to the 8 performance and execution of your duties as an underwriter, 9 right? 10 A. <b>I'm not sure I agree with it.</b> 11 Q. Okay. Let's look at your deposition transcript at page 12 47. 13 A. <b>Certainly.</b> 14 Q. And if I could direct you to page 47, line 7. Let me 15 know when you're there. 16 A. <b>Patience, counselor.</b> 17 <b>I'm there.</b> 18 Q. You were asked at your deposition "Question: Your 19 personal judgment was crucial in the performance of your 20 underwriting duties, correct?" 21 "Answer: Yes." 22 That was your testimony at your deposition, 23 right? 24 A. <b>Yes.</b> 25 Q. Your emotional quotient or your emotional intelligence</p>

<p style="text-align: right; margin: 0;"><b>1550</b></p> <p>1 was also crucial to your work as an underwriter, right?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. And Blaze doesn't improve underwriters' ability to</p> <p>4 exercise emotional intelligence and connect with people,</p> <p>5 right?</p> <p>6 A. <b>Yes, but --</b></p> <p>7 Q. I'll take the "yes," thank you.</p> <p>8 Let's focus on the technology aspects of running</p> <p>9 an insurance company. You understand that Chubb uses many,</p> <p>10 many different technologies to sell insurance, right?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. Now, Mr. Hinderaker made a point of opening your</p> <p>13 testimony this morning by pointing out that Duck Creek</p> <p>14 technology was located in the CSI Express application</p> <p>15 before Chubb purchased its license to use Blaze. Do you</p> <p>16 remember that?</p> <p>17 A. <b>I do.</b></p> <p>18 Q. But before you rendered your expert opinions in this</p> <p>19 case about the so-called importance of Blaze, you didn't do</p> <p>20 anything to investigate how many other technologies were</p> <p>21 deployed at the same time as Blaze at Chubb, correct?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. And, in fact, at the time you rendered your expert</p> <p>24 report and gave all these opinions, you denied that Chubb</p> <p>25 could possibly be using hundreds of other technologies in</p>	<p style="text-align: right; margin: 0;"><b>1552</b></p> <p>1 making to revenue, right? You haven't looked at that.</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. Now, the jury heard Mr. Ramesh Pandey talk about how</p> <p>4 Duck Creek is the brain of CSI Express. And you heard</p> <p>5 that, too, right?</p> <p>6 A. <b>I did.</b></p> <p>7 Q. But you didn't do anything to figure out how much Blaze</p> <p>8 is contributing to CSI Express relative to Duck Creek,</p> <p>9 correct?</p> <p>10 A. <b>Correct.</b></p> <p>11 Q. And that same would be true for the CUW-IM application,</p> <p>12 right? You didn't do anything to examine, well, how much</p> <p>13 is Blaze doing in CUW-IM as compared to the other</p> <p>14 dozen-plus technologies, right? You didn't look at that?</p> <p>15 A. <b>Correct.</b></p> <p>16 Q. You talked about the rules that were in place at Chubb,</p> <p>17 right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. And you understand, though, that when Blaze was used at</p> <p>20 Chubb, it did not process all of the rules that Chubb was</p> <p>21 running in the course of selling insurance, right?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. And I think you said yesterday that when you sat down</p> <p>24 to review the actual rules that Chubb was running, you</p> <p>25 wanted to make sure that your thoughts about them made</p>
<p style="text-align: right; margin: 0;"><b>1551</b></p> <p>1 addition to Blaze, right?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. You said, wow, you know, I haven't seen that holy-cow</p> <p>4 number, right, that there would be more than 100 different</p> <p>5 technologies, right?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. But now you've seen testimony from Mr. Pandey and</p> <p>8 Mr. Ghislanzoni confirming that there were hundreds of</p> <p>9 other technologies in use, right?</p> <p>10 A. <b>I have.</b></p> <p>11 Q. And you didn't consider that at all before you wrote</p> <p>12 those 75 pages of opinions about the value of Blaze to</p> <p>13 Chubb, correct?</p> <p>14 A. <b>Correct.</b></p> <p>15 Q. And you also have not done anything to measure the</p> <p>16 relative contribution that Blaze made to all these things</p> <p>17 like speed, ease of doing business, agility, as compared to</p> <p>18 the benefits that Chubb got from other technologies, right?</p> <p>19 You didn't look into that.</p> <p>20 A. <b>Correct.</b></p> <p>21 Q. And certainly technologies other than Blaze are</p> <p>22 contributing to Chubb's ability to acquire revenue, right?</p> <p>23 A. <b>Yes.</b></p> <p>24 Q. But you haven't made any effort to determine how much</p> <p>25 of a direct contribution those other technologies are</p>	<p style="text-align: right; margin: 0;"><b>1553</b></p> <p>1 sense, so you spoke with a consultant, right, a Brian</p> <p>2 Sacco?</p> <p>3 A. <b>Brian Sacco.</b></p> <p>4 Q. Sacco. And you characterized him as someone who is</p> <p>5 highly knowledgeable about rule repositories, right?</p> <p>6 A. <b>I did.</b></p> <p>7 Q. And you spoke to Mr. Sacco because you personally are</p> <p>8 not someone who is highly knowledgeable about rule</p> <p>9 repositories. That's why you needed to talk to him, right?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. And before you rendered all your expert opinions in</p> <p>12 this case, you didn't do anything to investigate how many</p> <p>13 other rules Chubb was running in its business, right? You</p> <p>14 said it would be pure, unadulterated speculation for you to</p> <p>15 try to figure out how many non-Blaze rules Chubb was</p> <p>16 running.</p> <p>17 A. <b>I did.</b></p> <p>18 Q. So in offering all these opinions about the value of</p> <p>19 Blaze to Chubb, you didn't do anything to examine the rate</p> <p>20 at which the Blaze technology was adopted at Chubb, right?</p> <p>21 You didn't look at how many rules were they deciding to run</p> <p>22 with Blaze versus how many rules are they having software</p> <p>23 engineers write. You didn't run that comparison.</p> <p>24 A. <b>That is correct.</b></p> <p>25 Q. Now, when Chubb uses Blaze in the selling of insurance,</p>

1554	1556
<p>1 the process of defining the rules is decided and  2 articulated by people at Chubb, not people at FICO, right?  3 <b>A. Yes.</b>  4 Q. And the process of defining rules, you know from your  5 years in the insurance industry, takes substantial  6 experience, right?  7 <b>A. Yes.</b>  8 Q. If the rules do not accurately reflect an insurance  9 company's risk appetite and its view of what's an adequate  10 premium to charge, the result is, you're going to lose  11 money, right?  12 <b>A. I would say that the result is negative things are</b>  13 <b>going to happen, which usually leads to that conclusion.</b>  14 Q. Without good rules, Mr. Whitener, an insurance company  15 cannot make money, right?  16 <b>A. Correct.</b>  17 Q. And to the extent rules are being used to speed things  18 up, speed is only good if you're speeding up decisions that  19 are good for the insurance company, right?  20 <b>A. I agree.</b>  21 Q. If you're making a lot of quick decisions to bind and  22 renew policies that are not profitable, that's not a good  23 thing.  24 <b>A. Agreed.</b>  25 Q. Now, you also spoke on direct about how Blaze can</p>	<p>1 Q. You didn't consider that testimony from Mr. Pandey or  2 Mr. Ghislazoni before you offered expert opinions in this  3 case, correct? You didn't read their testimony?  4 <b>A. Correct.</b>  5 Q. And you, of course, don't have any personal knowledge  6 of the IT infrastructure at Chubb that would allow you to  7 say, oh, no, the business people are writing all the rules,  8 correct?  9 <b>A. Oh, absolutely correct.</b>  10 MS. GODESKY: Thank you, Vanessa. We can take  11 that down.  12 BY MS. GODESKY:  13 Q. Now, on this topic of your opinion that Chubb realized  14 benefits from Blaze by increasing speed, you don't know  15 whether Blaze actually increased the speed of responding to  16 requests for quotes, correct?  17 <b>A. I know that it increased speed. I do not know</b>  18 <b>precisely how much it increased speed.</b>  19 Q. Let's look at your deposition transcript at page 135.  20 <b>A. In the box, correct?</b>  21 Q. Please.  22 <b>A. Bear with me.</b>  23 <b>I'm there.</b>  24 Q. So at page 135, line 14, the question was, "Do you know  25 whether Blaze increased the speed of response to quote</p>
<p>1 increase speed compared to having software engineers  2 programming the code themselves, right? So-called hard  3 coding by some.  4 <b>A. Or professional coding, as it was described.</b>  5 Q. Or professional coding, right?  6 Vanessa, can we pull up slide 23, please, from  7 Mr. Whitener's presentation? Thank you.  8 This is one of the slides you showed the jury  9 during your direct examination, right?  10 <b>A. It is.</b>  11 Q. And you wrote -- under hard-coding the rules, you  12 wrote, "Hard coding requires substantial IT resources to  13 write business rules and changes to business rules in  14 computer language into application software." Do you see  15 that?  16 <b>A. I do.</b>  17 Q. But you don't have any evidence that when folks at  18 Chubb used Blaze, they were able to stop using IT sources,  19 right?  20 <b>A. Correct.</b>  21 Q. And, in fact, you heard Mr. Pandey and Mr. Ghislazoni  22 explain from the perspective of Chubb architects that the  23 Chubb business folks weren't able to write rules into  24 Blaze, right? You heard that.  25 <b>A. Yes, but --</b></p>	<p>1557</p> <p>1 requests in Federal?  2 "Answer: I performed no quantitative analysis in  3 this process, no. I do not know."  4 That was your testimony, correct, Mr. Whitener?  5 <b>A. Correct.</b>  6 Q. And you also can't say whether Chubb was actually able  7 to increase its speed of making renewal offers to  8 customers, correct?  9 <b>A. Based on the same premise, I understand -- I understand</b>  10 <b>that the renewal does not have to go to a human, it gets</b>  11 <b>done faster.</b>  12 Q. Mr. Whitener, you do not know whether Chubb increased  13 the speed of making renewal offers because of Blaze,  14 correct?  15 <b>A. I do not know how much.</b>  16 Q. Let's look at your deposition transcript at page 135.  17 <b>A. I'm there.</b>  18 Q. Actually, let's look at 136, line 8.  19 <b>A. I'm there.</b>  20 Q. "Question: So you just don't know whether Federal  21 increased the speed of making renewal offers because of its  22 use of Blaze, correct?  23 "Answer: That is correct."  24 That was your testimony back in 2019, correct?  25 <b>A. Yes, but --</b></p>

	1558		1560
1	Q. The "yes" is fine. Thank you.	1	about with Mr. Hinderaker.
2	A. <b>You're welcome.</b>	2	A. <b>Yes.</b>
3	Q. And you also don't know, Mr. Whitener, whether Blaze	3	Q. But you did not measure in this case whether Blaze
4	actually allowed Chubb to increase its speed to market by	4	actually improved Chubb's ability to define accurate and
5	ensuring compliance with all those reporting requirements	5	adequate pricing, right?
6	you talked about, correct?	6	A. <b>Correct.</b>
7	A. <b>Yes, but --</b>	7	Q. And you can't speak at all to whether Chubb actually
8	Q. The answer is yes, right, Mr. Whitener?	8	increased the precision and accuracy of its quotes to
9	A. <b>Yes.</b>	9	customers?
10	Q. Now, you talked on direct examination, and we saw on	10	A. <b>Correct.</b>
11	the slide, your opinion that Blaze improved the ease of	11	Q. You also don't know whether Chubb increased the
12	doing business at Chubb, right?	12	precision and adequacy of its renewal offers, do you?
13	A. <b>Yes.</b>	13	A. <b>Correct, but --</b>
14	Q. But you did not try to quantify in this case whether	14	Q. It's correct, right?
15	Blaze actually improved Chubb's ease of doing business,	15	A. <b>Correct.</b>
16	correct?	16	Q. There was also talk during your direct examination
17	A. <b>Yes. Allow me to point out, I quantified. I measured</b>	17	about how the benefits of Blaze allowed Chubb to grow in
18	<b>none of these things.</b>	18	the Small Commercial and mid-market segments. Do you
19	Q. You don't know whether Chubb increased the ease of use	19	remember that?
20	for agents and brokers by using Blaze in certain	20	A. <b>I do.</b>
21	applications. You don't know that, right?	21	Q. But you don't know whether it's, in fact, true that
22	A. <b>I don't know how much.</b>	22	Chubb grew in the Small Commercial and mid-market segments
23	Q. You don't know that they did, correct?	23	because of Blaze, right? You can't say that.
24	A. <b>Yes, but --</b>	24	A. <b>Correct.</b>
25	Q. Mr. Whitener, let's look at your deposition testimony	25	Q. Vanessa, if we could put up slide 37, please.
	1559		1561
1	from June at page 140.	1	This is another slide you showed the jury during
2	A. <b>I'm there.</b>	2	your direct examination, right?
3	Q. Page 40 [sic], line 25, you were asked --	3	A. <b>It is.</b>
4	A. <b>Counsel -- I'm sorry. Go ahead.</b>	4	Q. And there is this quote, "Technology is a competitive
5	Q. "Is it correct to say that you do not know whether	5	weapon." And you said, oh, yes, you know, from my
6	Federal increased its ease of use for agents and brokers by	6	examination of the document, Chubb agrees with that, right?
7	way of those three bullet points?" And those were your	7	A. <b>Yes.</b>
8	bullet points about the value of Blaze, right?	8	Q. This is a discussion about a particular segment of the
9	And you answered, "That is correct." That was	9	Chubb business where 80 percent or more of submissions were
10	your testimony, correct?	10	not touched by humans as reported in this document, right?
11	A. <b>Counselor, I'm at page 140.</b>	11	A. <b>Yes.</b>
12	Q. Yes.	12	Q. You understand from sitting through this trial that
13	A. <b>Is that where you are?</b>	13	this comment has nothing to do with Blaze, right? This is
14	Q. Yes. At line 25?	14	a discussion about a different area at Chubb that used Duck
15	A. <b>I'm sorry. I'm on the wrong line.</b>	15	Creek technology, right?
16	Q. You were asked, "Is it correct to say that you do not	16	A. <b>I wasn't, but yes.</b>
17	know whether Federal increased the ease of use for agents	17	Q. You have no reason to believe this is a reference to
18	and brokers by way of those three bullet points," and that	18	Blaze Advisor software, correct?
19	was a reference to all your opinions, right?	19	A. <b>No. I believe it's a general statement by the CEO.</b>
20	A. <b>You are correct.</b>	20	MS. GODESKY: Your Honor, I'm about to switch
21	Q. And your answer was, "You are correct." Right?	21	topics, if it's a good time to break.
22	A. <b>You are correct.</b>	22	THE COURT: Let's keep going a few more minutes.
23	Q. You also testified on direct examination, and we saw	23	Got about eight minutes.
24	the slides about how Blaze allowed Chubb to precisely price	24	MS. GODESKY: Okay.
25	its policies, right? That was another thing you talked	25	BY MS. GODESKY:

<p style="text-align: center;"><b>1562</b></p> <p>1 Q. Mr. Whitener, during direct examination, you walked us 2 through all the computer applications that you say use 3 Blaze, right? 4 A. <b>Yes.</b> 5 Q. You have never used any of those computer applications? 6 A. <b>Correct.</b> 7 Q. Let's start with CSI Express. CSI Express is a policy 8 administration system, right? 9 A. <b>It is.</b> 10 Q. And like pretty much every policy administration 11 system, it's complex, correct? 12 A. <b>Correct.</b> 13 Q. It involves many different technologies? 14 A. <b>It does.</b> 15 Q. But before you rendered all your opinions in this case 16 about the value of Blaze and CSI Express, you didn't do 17 anything to measure how significant a part of CSI Express 18 Blaze is, right? 19 A. <b>Yes.</b> 20 Q. You have not done any analysis of what amount of 21 improvement to speed, ease of doing business or adequacy of 22 pricing is attributable to Blaze in CSI Express as opposed 23 to the application as a whole, correct? 24 A. <b>Correct.</b> 25 Q. That was outside the scope of the responsibilities you</p>	<p style="text-align: center;"><b>1564</b></p> <p>1 Q. Mr. Whitener, before rendering all your opinions in 2 this case, you gave zero thought to whether you could have 3 measured all this contribution to speed that you say is 4 attributable to Blaze, correct? 5 A. <b>Zero?</b> 6 Q. Zero. Sound right? 7 A. <b>No. I took zero action based on those thoughts.</b> 8 Q. Let's look at your deposition page 153. 9 A. <b>I'm there.</b> 10 Q. Line 19. "Question: In your mind, would it be even 11 possible to measure the contribution that Blaze has to the 12 speed that you've discussed CSI Express creating? 13 "Answer: Having had the privilege of giving that 14 question zero thought, I can't answer it." 15 That's the testimony you gave, correct? 16 A. <b>It is.</b> 17 Q. Let's talk about Profitability Indicator. That's 18 another application you talked about, correct? 19 A. <b>Correct.</b> 20 Q. And you said it increased speed relating to renewals in 21 response to requests for quotes, correct? 22 A. <b>I'm sorry. Repeat that.</b> 23 Q. You talked about how it increases speed because of 24 Blaze, right? 25 A. <b>I did.</b></p>
<p style="text-align: center;"><b>1563</b></p> <p>1 had in this case, right? 2 A. <b>Correct.</b> 3 Q. In fact, before rendering expert opinions in this case, 4 you spent less than one second reviewing the components of 5 CSI Express that had nothing to do with Blaze, correct? 6 A. <b>Correct.</b> 7 Q. And you spoke a lot on direct examination about how 8 Blaze must have brought speed to CSI Express, but you 9 haven't done any work to try to determine whether you're 10 talking about one day, two days or hours, right? 11 A. <b>You are correct.</b> 12 Q. You didn't look at that. 13 A. <b>Correct.</b> 14 Q. And also in the context of CSI Express, you do not know 15 whether CSI Express actually increased the speed of 16 response to requests for quotes at Chubb, right? 17 A. <b>Yes, but --</b> 18 Q. You do not know, right, Mr. Whitener? 19 A. <b>Yes.</b> 20 Q. You don't know. 21 A. <b>Yes.</b> 22 Q. And you do not know whether the speed of making renewal 23 offers through CSI Express was actually increased because 24 of Blaze. You cannot say that, right? 25 A. <b>I cannot say how much. I can say I believe it was.</b></p>	<p style="text-align: center;"><b>1565</b></p> <p>1 Q. And Profitability Indicator is part of the CSI Express 2 application? 3 A. <b>It is.</b> 4 Q. Counted as a separate application on your direct 5 examination, but it's part of CSI Express, right? 6 A. <b>It is an additional application deployed inside of CSI 7 Express.</b> 8 Q. And you don't know whether Profitability Indicator, 9 including Blaze, actually contributed to increased 10 revenues, right? 11 A. <b>Excuse me. I didn't -- yes, I did not measure 12 anything.</b> 13 Q. Let's move on to DecisionPoint. You talked about all 14 of the value that Blaze brought to DecisionPoint during 15 your direct examination, right? 16 A. <b>Yes.</b> 17 Q. And DecisionPoint, just like Profitability Indicator, 18 is part of CSI Express, correct? 19 A. <b>Yes.</b> 20 Q. You're sort of counting it separately on your slides, 21 right? 22 A. <b>Yes.</b> 23 Q. You don't know whether DecisionPoint actually 24 contributed to revenue at Chubb, correct? 25 A. <b>Yes, but --</b></p>

<p style="text-align: center;"><b>1566</b></p> <p>1 Q. It's correct, right, Mr. Whitener?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. Next up was Evolution. Based on your review of the 4 record in this case, you agree that Evolution uses many 5 different technologies in addition to Blaze, right?</p> <p>6 A. <b>Yes.</b></p> <p>7 Q. And you do not know whether the speed of response to 8 quotes or requests for renewal were actually increasing 9 because of Blaze, right?</p> <p>10 A. <b>Yes, but -- yes.</b></p> <p>11 Q. You don't know?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. And you haven't done anything to determine whether the 14 use of Blaze in Evolution actually improved the 15 availability of underwriting, correct?</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. Then you talked about Adapt. Adapt is a policy 18 administration system, right?</p> <p>19 A. <b>It is.</b></p> <p>20 Q. It is complex, correct?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. And you cannot say whether any of the benefits that you 23 talked about on direct examination with Mr. Hinderaker were 24 actually realized by Chubb, correct?</p> <p>25 A. <b>Correct.</b></p>	<p style="text-align: center;"><b>1568</b></p> <p>1 A. <b>Correct.</b></p> <p>2 Q. And you haven't done any analysis to determine whether 3 Blaze's incorporation in Premium Booking meant that Chubb 4 could report data for their new products faster, right?</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. Next was TAPS, the Texas Accident Prevention System. 7 And you are aware that witnesses have testified in this 8 case that the function Blaze performed in TAPS could have 9 just as easily have been performed by an Excel spreadsheet, 10 right?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. You can't speak to whether or not that's true. You 13 don't know.</p> <p>14 A. <b>I know that the documents say that.</b></p> <p>15 Q. But you agree, it's certainly possible that other 16 software could have been used in TAPS to perform exactly 17 the same function as Blaze, right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. And you don't know whether Blaze's inclusion in TAPS is 20 what actually ensured that each policy written in the 21 workers' compensation line of business at Chubb was in 22 compliance with Texas regulations, correct?</p> <p>23 A. <b>May I ask you to restate?</b></p> <p>24 Q. You don't know whether Blaze's inclusion in TAPS is 25 what was actually ensuring that all of these workers' comp</p>
<p style="text-align: center;"><b>1567</b></p> <p>1 Q. Cornerstone is another policy administration system for 2 all those surety bonds, right?</p> <p>3 A. <b>Correct.</b></p> <p>4 Q. Also complex.</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. And you don't know whether any of the benefits that you 7 spoke about on direct examination were actually realized by 8 Chubb because of Blaze, correct?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Then we have these compliance systems. Premium Booking 11 is one of them, right?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. That's also in CSI Express, right?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. And the process underlying the Premium Booking 16 application used at Chubb is complex.</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. But before rendering all your expert opinions about the 19 value of Blaze and Premium Booking, you didn't do anything 20 to investigate what systems and software other than Blaze 21 are used in Premium Booking, correct?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. And you haven't conducted any analysis to determine 24 whether Premium Booking actually enabled Chubb to bring new 25 products to market faster, right?</p>	<p style="text-align: center;"><b>1569</b></p> <p>1 insurance policies satisfied Texas regulations, correct?</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. Then you talked about IRMA. You have not determined 4 whether IRMA actually contributes to revenue at Chubb by 5 ensuring that quoted and issued policies are compliant, 6 right?</p> <p>7 A. <b>Correct.</b></p> <p>8 Q. Then there was CUW inventory management. That was 9 another application you walked us through, correct?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. It uses many different technologies, right, 12 Mr. Whitener?</p> <p>13 A. <b>If you're referring to CUW, that is correct.</b></p> <p>14 Q. And you cannot say anything as to whether the inclusion 15 of Blaze in CUW-IM actually accelerated inventory 16 management at Chubb, correct?</p> <p>17 A. <b>Correct.</b></p> <p>18 THE COURT: Ms. Godesky, are you still at a 19 convenient breaking point?</p> <p>20 MS. GODESKY: Sure.</p> <p>21 THE COURT: Or --</p> <p>22 MS. GODESKY: Yeah, it's fine. Thank you.</p> <p>23 THE COURT: All right. Members of the Jury, 24 we're take our lunchtime recess. Be back in the courtroom 25 at one o'clock.</p>

<p style="text-align: center;"><b>1594</b></p> <p>1 Q. So before the lunch break, we were going through all 2 the different computer applications at Chubb that used 3 Blaze that you talked about with Mr. Hinderaker, right? 4 A. <b>Agreed.</b> 5 Q. And the next one I want to talk about is Brokersite. 6 That is another application that you talked about during 7 direct, correct? 8 A. <b>Correct.</b> 9 Q. And you were in court yesterday, and you've heard 10 Mr. Mirolyuz at Chubb testify that Brokersite does not use 11 Blaze Advisor, correct? 12 A. <b>Correct.</b> 13 Q. And you, of course, never worked at Chubb, so you don't 14 have a basis to dispute that with your personal knowledge, 15 right? 16 A. <b>Correct.</b> 17 Q. CIS Claims is another application that you talked about 18 with Mr. Hinderaker, right? 19 A. <b>Correct.</b> 20 Q. And even though it's called claims, it is not a claims 21 handling application, right? 22 A. <b>Correct.</b> 23 Q. And you cannot say whether the use of CIS Claims 24 contributed to Chubb's revenue, correct? 25 A. <b>I disagree.</b></p>	<p style="text-align: center;"><b>1596</b></p> <p>1 and analyze how they compare to Blaze, correct? 2 A. <b>Correct.</b> 3 Q. Now, during your questioning with Mr. Hinderaker, you 4 talked a bit about other insurance companies making use of 5 rules software, right? 6 A. <b>I'm sorry. Say that again.</b> 7 Q. During your direct examination, you talked a little bit 8 about other insurance companies using Blaze. 9 A. <b>Yes.</b> 10 Q. And if we could pull up, Vanessa, slide 28 from 11 Mr. Whitener's PowerPoint. 12 This is one of those slides, right, Mr. Whitener? 13 A. <b>It is.</b> 14 Q. And Mr. Hinderaker showed you this slide during your 15 direct and he said, you know, this is internal 16 communications at Chubb, right? 17 A. <b>Yes.</b> 18 Q. He made a point of saying, this was Chubb reporting to 19 themselves about use of Blaze at other companies, right? 20 A. <b>Yes.</b> 21 Q. And do you see at the bottom of this document, there's 22 a source listed? 23 A. <b>It is.</b> 24 Q. Who is the source? 25 A. <b>Fair Isaac.</b></p>
<p style="text-align: center;"><b>1595</b></p> <p>1 Q. Let's look at your deposition at page 211. 2 A. <b>Bear with me.</b> 3 Q. Sure. 4 A. <b>I did better this time.</b> 5 Q. Your deposition at page 211, line 7. "Question: Do 6 you know whether that use of CIS Claims in fact contributes 7 to Federal's revenue? 8 "Answer: I have done no quantification research, 9 nor have I talked with anyone at Federal, Chubb, ACE 10 Limited." 11 That was your answer at your deposition, correct, 12 Mr. Whitener? 13 A. <b>Correct.</b> 14 Q. Now, Blaze is not the only decision management software 15 out there. Alternatives do exist, correct? 16 A. <b>Correct.</b> 17 Q. And your report identifies ten of them, right? 18 A. <b>Approximately, yes.</b> 19 Q. And those alternative decision management software 20 products could have been used in the computer applications 21 at Chubb that we've all been discussing in this trial, 22 right? 23 A. <b>Yes. I'm sorry. Yes.</b> 24 Q. But in forming your opinions in this case, you did not 25 look at all at those other decision management softwares</p>	<p style="text-align: center;"><b>1597</b></p> <p>1 Q. And if you go to slide 28, Vanessa, the next slide or 2 29. 3 There's the continued discussion of how Blaze's 4 apparently being used in the P&amp;C industry, right? 5 A. <b>Yes.</b> 6 Q. And what's the source on that slide? 7 A. <b>Fair Isaac.</b> 8 Q. And as we discussed earlier, before you rendered your 9 expert opinions in this case about the value of Blaze to 10 Chubb, you didn't conduct a study of how all these 11 insurance companies are using Blaze as compared to having 12 software engineers code. 13 A. <b>That's correct.</b> 14 Q. And you heard, sitting through this trial, that Chubb 15 used decision management software in just one percent of 16 its 1500 computer applications before the merger, right? 17 A. <b>As measured on a number of applications footprint 18 basis, yes.</b> 19 Q. And they were using software engineers to code the 20 rules in all the other applications, right? That's the 21 testimony. 22 A. <b>I believe so.</b> 23 Q. And the decision -- that was a decision that Chubb made 24 before the merger, even though it had an enterprise-wide 25 license to use Blaze without any limit on the number of</p>

1598	1600
1 applications, correct? 2 A. <b>That is my understanding.</b> 3 Q. That's a pretty low rate of adoption, right, 4 Mr. Whitener? One percent? It's pretty low. 5 A. <b>Yes.</b> 6 Q. And then you heard from Mr. Ghislanzoni that at ACE 7 before the merger, ACE had decided to put Blaze into one 8 computer application and then this ODM decision management 9 program in about three applications. You heard him testify 10 about that, right? 11 A. <b>I heard the testimony.</b> 12 Q. So at ACE, another giant insurance company, they're 13 only using rules software in less than one percent of their 14 applications, right? 15 A. <b>Sounds right.</b> 16 Q. And you don't have any basis to disagree with 17 Mr. Ghislanzoni's testimony that ACE didn't see a benefit 18 to using rules software more widely, correct? 19 A. <b>No.</b> 20 Q. And then you also heard Mr. Ghislanzoni explain that at 21 the combined ACE/Chubb entity today, rules software is 22 still used in only one percent of all of their computer 23 applications, right? 24 A. <b>Yes.</b> 25 Q. And you have no basis to disagree with that, correct?	1 that -- the analysis that you did make as opposed to the 2 analysis that you did not make. So let me focus on the 3 analysis that you did make. 4 There were at various times in your answers to 5 the last set of questions where you would say mostly 6 correct, partially correct, yes, but, correct, but. 7 What was the qualification that you were trying 8 to express? 9 MS. GODESKY: Objection. 10 THE COURT: Overruled. 11 THE WITNESS: As I mentioned earlier, in my 12 underwriting thought process, there's a difference between 13 what something does and how much something does something. 14 So when you ask me does it make things faster? Yes. I've 15 been at this for a couple of decades. Okay. Maybe more 16 than a couple decades. 17 And the pursuit of responding to requests for new 18 business and improving that response timing and -- has been 19 a key strategy for 44 years. In fact, I was reading 20 Property Casualty 360 about three weeks ago, and another 21 company whose name escapes me, property casualty insurance 22 company, licensed another software package and in their 23 reasoning they quoted speed. 24 So that's an important thing. And when I go to 25 ease of doing business, I can say the same things. These
1599	1601
1 A. <b>None.</b> 2 Q. And unlike Mr. Ghislanzoni and Mr. Pandey, as part of 3 your day-to-day work, you've never spent time analyzing the 4 efficiencies and functionality of rules software versus 5 coding by software engineers, correct? 6 A. <b>In terms of the current technology, that is correct.</b> 7 Q. Now at the end of your examination, we all saw this 8 final summary slide, right, and the final summary slide was 9 Blaze brought value to Chubb. 10 That's the summary of your opinion, correct? 11 A. <b>I believe I added the word "significant" but yes.</b> 12 Q. Significant value. That's the summary of your opinion, 13 right? 14 A. <b>Correct.</b> 15 Q. But you do not know whether Blaze actually contributed 16 to any increase in revenue or profit at Chubb, correct? 17 A. <b>I did -- correct. I did not measure anything.</b> 18 Q. Thank you. 19 I have no further questions. 20 A. <b>Thank you.</b> 21 THE COURT: Mr. Hinderaker, redirect. 22 MR. HINDERAKER: Thank you. 23 <u>REDIRECT EXAMINATION</u> 24 BY MR. HINDERAKER: 25 Q. Mr. Whitener, my purpose is to talk about the analysis	1 are, these are value points that the property casualty 2 insurance company pursues and pursues intentionally. How 3 much they get in terms of deployment of an application, 4 they don't measure it. I haven't measured it. 5 And in all of the documentation I was provided, 6 there was nothing that could speak to any of that. 7 BY MR. HINDERAKER: 8 Q. And, for example, well I'll go back to that, but I want 9 to, I guess, stay on this examination for a moment, this 10 line. 11 And let me bring you to -- you were asked about 12 some stuff on your deposition at page 135. And if you can 13 find page 135, please. 14 MS. GODESKY: Objection. 15 THE COURT: Sustained. 16 BY MR. HINDERAKER: 17 Q. I'd like to -- Ms. Godesky asked you to look at 18 page 135, line 22, to 136, line 6. And she read -- I'd 19 like to read the rest of the testimony. 20 MS. GODESKY: Objection. 21 THE COURT: Sustained. You can ask him the 22 questions. 23 MR. HINDERAKER: Okay. 24 BY MR. HINDERAKER: 25 Q. It's, as you just said, you performed no quantitative